



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

AGENDA

(Zoning) Board of Adjustment Meeting

Monday, June 18, 2018 at 3:30 P.M.

City Hall Council Chamber

201 E. Walnut

Decatur Texas 76234

Call to Order

- ITEM 1:** Administer Statement of Appointed Official and Oath of Office to Murvelle Chandler, Dennis McCreary and Wayne Stone as Regular ZBA Members.
- ITEM 2:** Accept resignation of Vice-Chairman Will Klose and elect a Vice-Chairman.
- ITEM 3:** Administer Statement of Appointed Official and Oath of Office to Kristy Campbell as an Alternate ZBA Member.
- ITEM 4:** Approval of April 16, 2018, Minutes.
- ITEM 5:** **ZBA2018-06**—The Board to consider and take action on Mrs. Mitzi Sullivan’s request for a Special Exception from the City of Decatur’s Zoning Ordinance regarding front yard setback. Specifically, applicant is requesting a variance to the City of Decatur Code of Ordinances, Appendix B. “Zoning,” Article 5. “Zoning Districts,” Section 5.1 “Zoning Districts Established,” Subsection 5.1.9 “C-1, Restricted Business District,” Item D “Area Regulations,” (1) “Size of Yard,” (a) “Minimum Front Yard,” to reduce the required front yard setback from twenty-five feet (25’) to seven feet (7’), a reduction of eighteen feet (18’), along west Walnut Street. The subject property is platted as Lot 1, Block 157R, Tarleton Addition and is more commonly referred to as 506 W. Walnut St., City of Decatur, Wise County, Texas.
- ITEM 6:** **ZBA2018-07**—The Board to consider and take action on Mrs. Marsha Nieman’s request for a Special Exception from the City of Decatur’s Zoning Ordinance regarding front yard setback. Specifically, applicant is requesting a Special Exception to the City of Decatur Code of Ordinances, Appendix B. “Zoning,” Article 5. “Zoning Districts,” Section 5.1 “Zoning Districts Established,” Subsection 5.1.9 “C-1, Restricted Business District,” Item D “Area Regulations,” (1) “Size of Yards,” (a) “Minimum Front Yard,” to reduce the required front yard setback from twenty-five feet (25’) to seventeen feet (17’), a reduction of eight feet (8’) along south. Lane Street. The subject property is identified as Lot 9R, Block 15, Range F, Devereux Addition and is more commonly referred to as 105 S. Lane St., City of Decatur, Wise County, Texas.
- ITEM 7:** **ZBA2018-08** The Board to consider and take action on Mrs. Marsha Nieman’s request for a Special Exception from the City of Decatur’s Zoning Ordinance regarding side yard setbacks. Specifically, applicant is requesting a Special Exception to the City of Decatur Code of Ordinances, Appendix B. “Zoning,” Article 5. “Zoning Districts,” Section 5.1 “Zoning Districts Established,” Subsection 5.1.9 “C-1, Restricted Business District,” Item D “Area Regulations,” (1) “Size of Yards,” (c) “Minimum Side Yard,” to reduce the required side yard setback from nine feet (9’) to two feet (2’), a reduction of seven feet (7’)

along the northern property line. The subject property is identified as Lot 9R, Block 15, Range F, Devereux Addition and is more commonly referred to as 105 S. Lane St., City of Decatur, Wise County, Texas.

ITEM 8: **ZBA2018-09** The Board to consider and take action on Mrs. Marsha Nieman's request for a Special Exception from the City of Decatur's Zoning Ordinance regarding rear yard setbacks. Specifically, applicant is requesting a Special Exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (d) "Minimum Rear Yard," to reduce the required rear yard setback from ten feet (10') to two feet (2'), a reduction of eight feet (8') along the rear property line. The subject property is identified as Lot 9R, Block 15, Range F, Devereux Addition and is more commonly referred to as 105 S. Lane St., City of Decatur, Wise County, Texas.

ITEM 9: New and/or future business items.

Adjournment

Prepared and posted this 14th day of June 2018 in accordance with Chapter 551, Texas Government Code.



Dedra D. Ragland, AICP
Director of Planning and Development

***NOTE: THE (ZONING) BOARD OF ADJUSTMENT RESERVES THE RIGHT TO ADJOURN INTO A CLOSED MEETING AT ANY TIME REGARDING ANY ITEM ON THE AGENDA FOR WHICH IT IS LEGALLY PERMISSIBLE UNDER THE TEXAS OPEN MEETINGS ACT PURSUANT TO LGC 551.071.**

City of Decatur
Decatur, TX

The State of Texas

OATH OF OFFICE

I, Murvelle Chandler; do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Board of Adjustment for the City of Decatur, Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

**Murvelle Chandler
ZBA Regular Board Member**

SWORN TO and subscribed before me by affiant on this 18th day of June, 2018.

Cheryl Fuss, Notary Public

(seal)

STATEMENT OF APPOINTED/ELECTED OFFICER

(Pursuant to Tex. Const. art.XVI, §1(b), amended 2001)

I, Murvelle Chandler, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election (appointment) at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.

June 18, 2018

Murvelle Chandler

ZBA Regular Board Member

Position to Which Elected/Appointed City of Decatur

City of Decatur
Decatur, TX

The State of Texas

OATH OF OFFICE

I, Dennis McCreary; do solemnly swear (or affirm), that I will faithfully execute the duties of the office of (Zoning) Board of Adjustment for the City of Decatur, Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

Name
ZBA Regular Member

SWORN TO and subscribed before me by affiant on this 18th day of June 2018.

Cheryl Fuss, Notary Public

(seal)

STATEMENT OF APPOINTED/ELECTED OFFICER

(Pursuant to Tex. Const. art.XVI, §1(b), amended 2001)

I, Dennis McCreary, do solemnly affirm, that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the appointment at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.

June 18, 2018

Name

ZBA Regular Member

Position to Which Elected/Appointed City of Decatur

City of Decatur
Decatur, TX

The State of Texas

OATH OF OFFICE

I, Wayne Stone; do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Board of Adjustment for the City of Decatur, Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

Wayne Stone
ZBA Regular Board Member

SWORN TO and subscribed before me by affiant on this 18th day of June, 2018.

Cheryl Fuss, Notary Public

(seal)

STATEMENT OF APPOINTED/ELECTED OFFICER

(Pursuant to Tex. Const. art.XVI, §1(b), amended 2001)

I, Wayne Stone, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election (appointment) at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.

June 18, 2018

Wayne Stone

ZBA Regular Board Member

Position to Which Elected/Appointed City of Decatur

WILL KLOSE, ZBA VICE-CHAIRMAN RESIGNATION

From: Will Klose [mailto:william.klose@sandycreekproperties.com]
Sent: Thursday, June 7, 2018 1:47 PM
To: Dedra Ragland <dragland@decaturtx.org>
Subject: RE: Letter of Resignation from ZBA

Dedra:

Please let this email serve as my formal resignation from the city of Decatur ZBA. I look forward to serving the city of Decatur and its residents on the P&Z Commission.

Thank you.

Will Klose

From: Dedra Ragland <dragland@decaturtx.org>
Sent: Thursday, June 7, 2018 12:49 PM
To: Will Klose <william.klose@sandycreekproperties.com>
Subject: Letter of Resignation from ZBA

Hi, Will,

Can you please send me a letter of resignation from the ZBA?

Thanks,

Dedra Denée Ragland, AICP, Director

City of Decatur
Planning and Development Services Department
1601 S. State Street, Building C
Decatur TX 76234
940.393.0250 (voice) 940.626.4629 (fax)
dragland@decaturtx.org

City of Decatur
Decatur, TX

The State of Texas

OATH OF OFFICE

I, Kristy Campbell; do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Board of Adjustment for the City of Decatur, Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

**Kristy Campbell
ZBA Alternate Board Member**

SWORN TO and subscribed before me by affiant on this 18th day of June, 2018.

Cheryl Fuss, Notary Public

(seal)

STATEMENT OF APPOINTED/ELECTED OFFICER

(Pursuant to Tex. Const. art.XVI, §1(b), amended 2001)

I, Kristy Campbell, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election (appointment) at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.

June 18, 2018

Murvelle Chandler

ZBA Alternate Board Member

Position to Which Elected/Appointed City of Decatur

**MINUTES
(ZONING) BOARD OF ADJUSTMENT MEETING
Monday, April 16, 2018 at 3:30 P.M.
City Hall Council Chambers
201 E. Walnut**

A meeting of the City of Decatur (Zoning) Board of Adjustment was held at 3:30 p.m. on April 16, 2018, at City Hall with the following in attendance:

MEMBERS PRESENT:

Will Klose, Vice-Chairman
Murvelle Chandler, Alternate
Dennis McCreary, Alternate
Wayne Stone, Alternate
Lisa Caraway

MEMBERS ABSENT:

Mark Duncum, Chairman

Others present were: Planning Director Dedra Ragland, Legal Counsel Patricia Adams, City Engineer Earl Smith, Development Review Coordinator Shanna Smith and Cheryl Fuss, representing the staff; and Beth McCurdy, Todd Burger, Marissa Burger and Buddy Miller, representing the applicants; and Jeff Tindall and Pauline Melanson, Decatur citizens.

Call to Order: Vice-Chairman Klose called the meeting to order at 3:33 p.m.

ITEM 1: Approval of December 18, 2017, Meeting Minutes.

Board Member Caraway made a motion to approve the December 18, 2017, Meeting Minutes. Alternate Board Member Chandler seconded the motion. The motion passed 5-0.

ITEM 2: **ZBA2018-01**—The Board to consider and take action on Mrs. Beth McCurdy’s request for a variance from the City of Decatur’s Zoning Ordinance regarding front yard setback. Specifically, applicant is requesting a variance to the City of Decatur Code of Ordinances, Appendix B. “Zoning,” Article 5. “Zoning Districts,” Section 5.1 “Zoning Districts Established,” Subsection 5.1.11 “C-2, Thoroughfare Business District,” Item D “Area Regulations for Nonresidential Uses,” (1) “Size of Yards,” (a) “Minimum Front Yard: Twenty Five feet (25’)” to reduce the required front yard setback from twenty-five feet (25’) to fifteen feet (15’), a reduction of ten feet (10’) along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas.

Planning Director Ragland presented the staff findings. The building is located on the northeast corner of Washburn and Brady Street. The property owner is not adding onto the existing building; however, a new tenant is remodeling the inside of one of the tenant spaces. Thirteen (13) property owners were notified. Staff has received one response neutral to the request.

Alternate Board Member McCreary asked if the variance will take care of the issues with the property. Planning Director Ragland answered, the approval of the variance will allow the plat to proceed thus correcting the setback encroachment issue.

Board Member Caraway asked if the changes will create any traffic issues. Planning Director Ragland answered, no.

From the evidence, testimony and plans presented, Alternate Board Member Stone moved that the Board grant variance request ZBA2018-01 to reduce the required

front yard setback from twenty-five feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn, City of Decatur, Wise County, Texas. Alternate Board Member McCreary seconded the motion. The motion passed 5-0.

ITEM 3: ZBA2018-03—The Board to consider and take action on Mr. Buddy Miller's request, on behalf of Mr. Todd Burger, for a special exception from the City of Decatur's Zoning Ordinance regarding residential front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D "Area Regulations," (1) "Size of Yards," (a) "Minimum Front Yard: Twenty Five feet (25')," to reduce the required front yard setback from twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas.

Planning Director Ragland presented the staff findings. Twenty-two (22) property owners were notified. Staff has received one response in favor of the request and one response opposed to the request. Planning Director Ragland explained the property owner who opposed the special exception may not have understood the notification.

Board Member Caraway asked if the footprint will change. Planning Director Ragland answered, the current addition will be demolished and a new addition will be constructed to meet the setback requirements. Alternate Board Member Stone asked if the addition will be on the front of home facing Hatcher. Planning Director Ragland answered, no, the new addition is proposed for the rear.

Jeff Tindall, 1301 S. Hatcher St., Decatur Texas, addressed the Board asking if the house will stay in the same configuration. Planning Director Ragland answered, the addition will be demolished and rebuilt and will meet the setback requirements. The footprint of the house will remain unchanged.

Applicant Buddy Miller added, the original house will stay the same, the addition will be demolished and the new addition will comply with the City's rules and regulations.

Vice-Chairman Klose asked, hypothetically, if the request is denied, then the plat could not be approved and a building permit could not be issued. Planning Director Ragland answered, correct. Vice-Chairman Klose added it is important to clean up the issues with properties. Board Member Caraway stated Staff will review any new building plans before a permit will be issued.

From the evidence, testimony and plans presented, Alternate Board Member Chandler moved that the Board grant special exception request ZBA2018-03 to reduce the required front yard setback from twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas. Alternate Board Member Stone seconded the motion. The motion passed 5-0.

ITEM 4: New and/or future business items.

Planning Director Ragland informed the Board the submittal deadline is Thursday, April 19, 2018, and there is possibly one case for the May 21, 2018, meeting. The property owner at 902 N. Church St. has been

in contact with Planning Director Ragland but has not submitted an application. Planning Director Ragland will reach out to her once more.

The meeting was adjourned at 3:51 p.m. by Vice-Chairman Klose.

Will Klose, Vice-Chairman

ATTEST:

Dedra Denée Ragland, Planning Director



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

STAFF REPORT

June 18, 2018 – Board of Adjustment Meeting

TO: (Zoning) Board of Adjustment

CASE: ZBA2018-06

FROM: Dedra D. Ragland, AICP, Planning Director **APPLICANT: Mitzi Sullivan**

DATE: May 29, 2018

REQUEST: Front Yard Setback 506 W. Walnut

Subject:

Board to hear public input and consider taking action on Mrs. Mitzi Sullivan's request for a variance from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yard," (a) "Minimum Front Yard," to reduce the required front yard setback twenty-five feet (25') to seven feet (7'), a reduction of eighteen feet (18') along West Walnut Street. The subject property is platted as Lot 1, Block 157R, Tarleton Addition and is more commonly referred to as 506 W. Walnut St., City of Decatur, Wise County, Texas.

Case Notes:

In December 2017, Mrs. Mitzi Sullivan submitted an application for a sign reface. Reface was denied due to a failure to provide adequate documentation of a pre-existing sign. Since documentation could not be provided, owner needed to submit for a new sign permit. Application needed a site plan reflecting front yard setback, easements, and sign's location to setback and easements. In April 2018, Mrs. Sullivan submitted an application for a new sign. Upon review of the site plan, it was discovered that the new sign encroached in the front yard setback. Applicant is requesting that the required twenty-five feet (25') minimum front yard setback be reduced to seven feet (7'), a reduction of eighteen feet (18'). The current residential structure is setback twenty-seven feet (27') from the property line.

Legality:

According to the Texas Local Government Code, the Board of Adjustment can legally authorize variations to the Zoning Ordinance subject to the conditions listed below (§211.008.010). Each case before the board must be heard by 75 percent of its members (§211.008.d), and the board can only authorize a variation from the terms of the Zoning Ordinance with a concurring vote of 75 percent (§211.009.c).

Conditions for Approval:

The applicant must meet all of the following four conditions to be legally granted a variance or special exception.

Financial or self-induced hardship cannot be considered:

1. The requested variance or special exception does not violate the intent and spirit of the ordinance.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel and are not applicable to other parcels of land in the same zoning district.
3. The hardship is not the result of the applicant's actions, and
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.

Per Section 4.3.7 "Special Exceptions," B. "Authority," of the Zoning Ordinance: The Board of Adjustment is authorized to hear and decide a Special Exception to the zoning regulations which is not permitted by right in a particular Zoning District because of potential adverse effect, but which if controlled in the particular instance as

to its relationship to the neighborhood and to the general welfare, may be permitted by the Board of Adjustment. Special Exceptions may only be considered and granted by the BOA if expressly authorized by C(2), and in accordance with the substantive and procedural standards of this Ordinance.

Deciding Factors:

The Board of Adjustment reviews the application and the response to the four conditions, and then hears the case to determine if the applicant qualifies. If the Board feels the applicant has met the stated conditions, then the Board may approve the variation as long as it meets these criteria (§211.009.a.3):

- 1) The variation is not contrary to the public interest.
- 2) The variation is due to special conditions.
- 3) A literal enforcement of the ordinance would result in unnecessary hardship.
- 4) The spirit of the ordinance is observed and substantial justice is done.

The Board of Adjustment must also review the special exception application per the following criteria:

“C. Criteria for Granting a Special Exception.

- (1) Requests for a Zoning Special Exception.
 - (a) The Board of Adjustment may grant a special exception in accordance with the Zoning Ordinance upon written request of the property owner.
 - (b) The Planning Director shall process and review special exception applications.
- (2) Circumstances for which Special Exceptions are Authorized. When in the Board of Adjustment’s judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the Board of Adjustment may, in specific cases, after public notice and public hearing and subject to conditions and safeguards as the BOA determines appropriate, authorize the following special exceptions to the regulations herein established:
 - (a) Nonconforming Uses or Structures.
 - (b) Residential Setback Encroachments. For existing single-family residential and duplex (two-family) structures that were legally constructed prior to the effective date of this Ordinance, the Board of Adjustment may authorize a Special Exception for any Structure that was constructed over a setback line established by this Ordinance.
 - (c) Off-Street Parking Requirements.
 - (d) Fencing.
- (3) *Conditions Imposed.* In granting Special Exceptions under this Section, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which a nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.”

Recommendation:

Staff has the following finding:

1. The requested variance **does** violate the intent and spirit of the ordinance. There exists approximately 27.6’ of front yard. There is enough room for sign to be located out of the required 25’ front yard, if oriented parallel to the building. A CPA is considered a professional service or contracted service. These type of services are required to be licensed or registered with the state. These services are delivered by an independent contractor individual, entity, or firm that offers its services to the public. Such services are paid on a fee basis for specialized services to the public. As such, CPA services are not solely dependent on advertising; and are an “impulse profession.” Clientele is generally established and built up via word of mouth.
2. There **are not** special considerations of physical features that are peculiar of drive by to the subject parcel that are not applicable to other parcels of land in the same zoning district. The structure is a house being

remodeled for a CPA's office. Applicant occupied the structure prior to obtaining and building permit and placed sign in a frame on the property prior to obtaining a sign permit. Sign permit application was originally submitted as a reface; however, when applicant could not provide documentation of the original sign, permit application was resubmitted as a new sign. Sign and frame are located within the 25' front yard building setback. For this type of business, a wall sign or shingle sign can also suffice for advertising.

3. The hardship **is** a result of the applicant's action. The sign was placed in the abandoned sign frame in spite of sign having been denied. As previously stated, the sign can be moved behind the 25' building line or property owner can place a wall or shingle sign on building that meets the City's regulations.
4. The interpretation of the provisions in this ordinance **does not** deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions. Pole sign can be located outside of the front yard setback. Wall signs are also allowed.

Twenty-nine (29) property owners were notified. Staff has not received any responses in favor of, opposed to or neutral to the request.

Options:

Recommend approval:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-06 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yard," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7'), a reduction of eighteen feet (18'), along West Walnut Street. The subject property is platted as Lot 1, Block 157R, Tarleton Addition and is more commonly referred to as 506 W. Walnut St., City of Decatur, Wise County, Texas.

Recommend approval with conditions:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-06 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, , Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yard," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7'), a reduction of eighteen feet (18'), along West Walnut Street. The subject property is platted as Lot 1, Block 157R, Tarleton Addition and is more commonly referred to as 506 W. Walnut St., City of Decatur, Wise County, Texas. The conditions being as follows:...

Recommend denial:

From the evidence, testimony and plans presented, I move that the Board deny the request ZBA2018-06 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, , Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yard," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7'), a reduction of eighteen feet (18'), along West Walnut Street. The subject property is platted as Lot 1, Block 157R, Tarleton Addition and is more commonly referred to as 506 W. Walnut St., City of Decatur, Wise County, Texas. Denial is based on the following findings:...

Recommend postponing consideration:

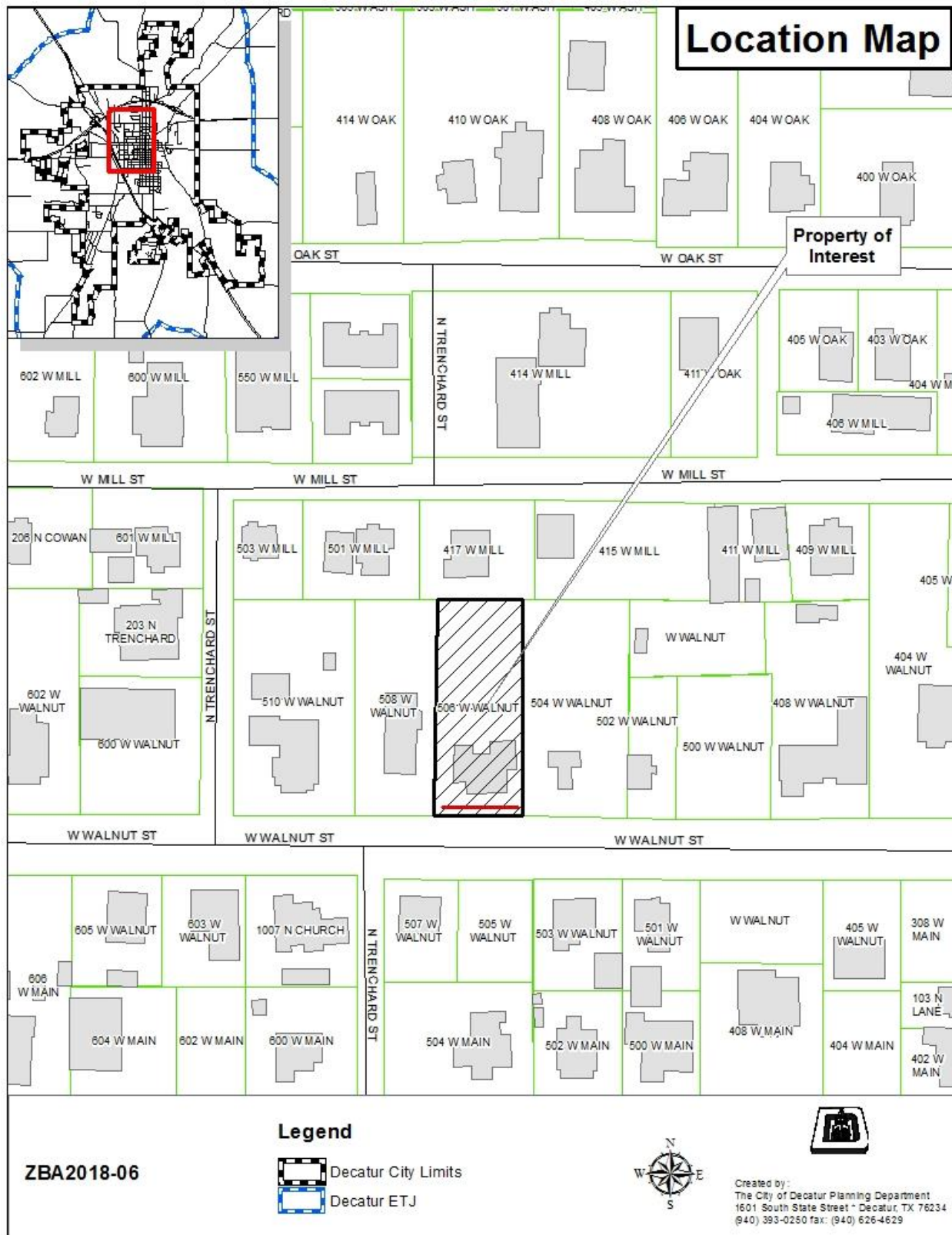
From the evidence, testimony and plans presented, I move that the Board postpone consideration of request to a date certain, and requesting additional information for the request ZBA2018-06 to allow for a special exception

from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, , Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yard," (a) "Minimum Front Yard," to reduce the required front yard setback twenty-five feet (25') to seven feet (7'), a reduction of eighteen feet (18'), along West Walnut Street. The subject property is platted as Lot 1, Block 157R, Tarleton Addition and is more commonly referred to as 506 W. Walnut St., City of Decatur, Wise County, Texas. Additional data being as follows:...

Attachments

1. Location Map
2. Application, Checklist and Letter of Intent
3. Plat Exhibit and Site Plan
4. Denied Sign Permit Application
5. 200' Property Owner Notification Map and Responses
6. Memo from City Engineer
7. Photo Exhibits

Attachment 1
Location Map



Application, Checklist and Letter of Intent

ZBA-18-0357

Attachment 1 ADD ZBA APPLICATION AND CHECKLIST

CITY OF DECATUR DEVELOPMENT SERVICES UNIVERSAL APPLICATION

Check box to indicate application type *Incomplete applications will be rejected*

<input type="checkbox"/> Annexation Petition	<input type="checkbox"/> Gas Well Development Plat	<input type="checkbox"/> Specific Use Permit
<input type="checkbox"/> Amending Plat	<input type="checkbox"/> Plat Extension-Final or Preliminary	<input type="checkbox"/> Subdivision Variance
<input type="checkbox"/> Comprehensive Plan Amendment	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Zoning Change
<input type="checkbox"/> Conveyance Instrument	<input type="checkbox"/> Replat	<input checked="" type="checkbox"/> Zoning Variance (ZBA)
<input type="checkbox"/> Design Standards Variance	<input type="checkbox"/> ROW Use Agreement	<input type="checkbox"/> Vacation Plat
<input type="checkbox"/> Final Plat	<input type="checkbox"/> ROW Abandonment/ Closing	<input checked="" type="checkbox"/> Other <u>Setback Variance</u>

Application Requirements: Signed application form, application fees, Copy and filing fees, Proof of Ownership (Recorded Deed or current tax statements), required # of plats / plans, signed checklist and a PDF of all documentation.

PROJECT INFORMATION: ☐ Residential ☒ Commercial Is this property platted? ☒ Yes ☐ No

Project Name: 506 W Walnut Sign Total Acres: .321

Project Address (Location): 506 W Walnut Parcel(s) Tax ID R #: _____

(LOT, BLOCK & SUBDIVISION OR SURVEY WITH METES & BOUNDS DESCRIPTION SEALED BY A LICENSED SURVEYOR)

Parent Project Name/Number: _____ Parcel(s) Tax ID GEO #: _____

Brief Description of Project: Installing Sign ETJ ☐ Yes

Please state the identity of any individual(s), or other entities that presently hold a lien upon the real estate which is the subject of this request: _____ Lien holder/mortgagee must also sign plat for filing of record.

Existing Use: _____ Existing Zoning: _____ # of Existing Lots: _____ # of Existing Units: _____

Proposed Use: _____ Proposed Zoning: _____ # of Proposed Lots: _____ Proposed Units: _____

APPLICANT INFORMATION: Please circle your preferred method of contact.

Applicant / Company: Mitzi Sullivan Email: mitzi@mescpatx.com

Address: 506 W Walnut Phone: 817-798-0573 Fax: _____

City: Decatur State: TX Zip: 76234

Property Owner: Mitzi Sullivan Email: _____

Address: 284 Amanda Way Phone: 940-399-9057 Fax: _____

City: Decatur State: TX Zip: 76234

Key Contact/Company: Josh Sullivan Email: joshua@mescpatx.com

Address: _____ Phone: 817-798-0573 Fax: _____

City: Decatur State: TX Zip: 76234

(MUST BE SIGNED FOR ALL APPLICATIONS) - Letter of authorization required if signature is other than property owner and a letter of authorization is required from lienholder/mortgagee, if applicable.

I hereby certify that I am the owner of the property identified in this application; or, that I am the authorized agent of the owner of said property; and that I am authorized to act in their behalf, and that this application, to the best of my knowledge and belief, is true and correct.

Mitzi Sullivan SIGNATURE OF LIEN HOLDER

SIGNATURE OF PROPERTY OWNER

PLAT WAIVER (MUST BE SIGNED FOR ALL PRELIMINARY, FINAL & REPLATS)

I waive the statutory time limits in accordance with Section 212 of the Texas Local Government Code.

SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER

Known to me to be the person(s) whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the capacity therein stated. Given under my hand and seal of office on this _____ day of _____ 20____

Notary Public

For Departmental Use Only

Case#: ZBA2018-06

Project Mgr: DOR

Total Fee(s): \$455

Payment Method: CC

Submittal Date: _____

RECEIVED

MAY 08 2018

CITY OF DECATUR
DEVELOPMENT SERVICES



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State St ★ P.O. Box 1299 ★ Decatur, TX 76234 ★ www.decaturtx.org

Board of Adjustment Application Checklist

General Requirements:

- ☒ A universal application form and the appropriate fees.
- ☒ A letter of explanation/justification.
- ☒ Submit a total of five (5) copies of site plan (if applicable) for the property. These copies should be individually folded with drawing side out.
- ☒ A location map clearly indicating the site in relation to adjacent streets, distance to nearest intersection and other landmarks.
- ☒ Submit one (1) copy of proof of ownership (recorded property deed or current year tax statements).
- ☒ Submit documentation on any and all liens and lien holders of property.
- ☒ One (1) CD-ROM containing the general required documents in Adobe PDF format.
- ☒ I have reviewed the checklist and all submittals for completeness and accuracy. If application submittal is determined to be incomplete, additional fees may be assessed.

Mitch Sullivan
Signature

5/4/18
Date

Content of the Letter of explanation/justification for a Zoning Variance:

I understand that I am applying for a variance from the Zoning Ordinance of the City of Decatur and that this variance can only be granted if I prove hardship by meeting four of the conditions below. I also understand that financial or self-induced hardship cannot be considered for granting a variance. Below I explain exactly how I meet these four conditions.

1. The requested variance does not violate the intent and spirit of the ordinance:

Due to front lot size, set-back can not be achieved.

2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to the other parcels of land in the same zoning district:

Small front yard. House close to curb.

3. The hardship is in no way the result of the applicant's action:

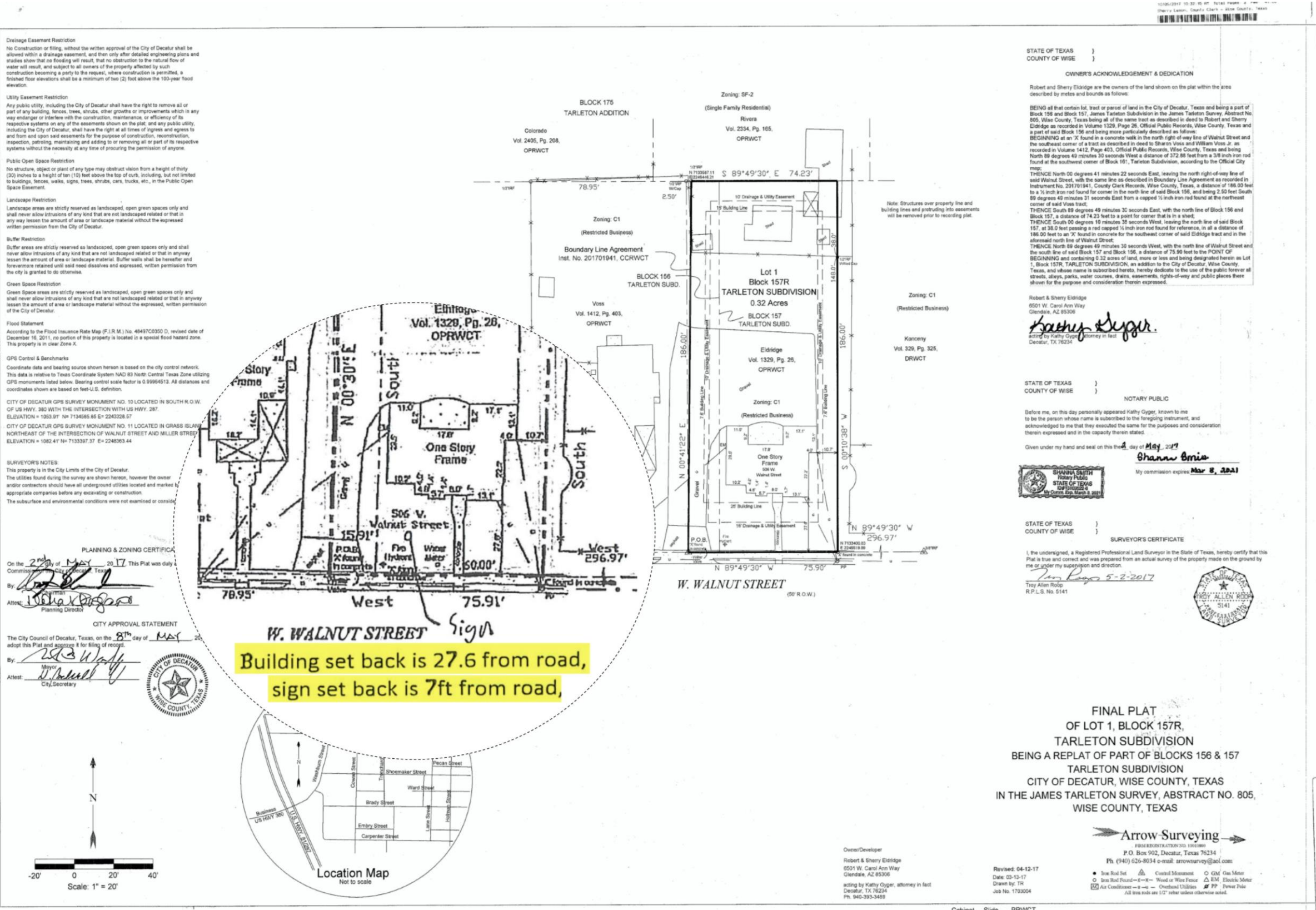
We purchase existing building.

4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions:

We would not be able to have a sign due to small lot size.

Form Updated 04/05/2017

Attachment 3
Plat Exhibit and Site Plan



Denied Sign Permit Application



CITY OF DECATUR, TEXAS Development Services Comments

Date Due: May 16, 2018
Project Number / Name: SGN-18-0314
Project Address: 506 W. Walnut St. – Monument Sign
Project Manager: Dedra Ragland, AICP, Planning Director
Applicant Name: Mitzi Sullivan, CPA
Contact Info: 940-399-9057 / Mitzi Sullivan

STATUS: DENIED w/COMMENTS

If you desire to resubmit a denied application, permit application may be reconsidered if the resubmittal addresses the attached comments.

RE-SUBMITTAL PROCESS:

A COVER LETTER, ADDRESSING THE FOLLOWING INFORMATION, MUST BE PROVIDED IN ORDER FOR RE-SUBMITTALS TO BE ACCEPTED FOR REVIEW.

The cover letter must include the following information:

1. The Permit Name and Address (as noted below)
2. The current date revisions are submitted
3. The applicant needs to restate each comment posted by staff; respond to each comment with a description of the revision(s) made to satisfy the comment and the page where the revision(s) may be located
4. Identify any additional changes/revisions made to the document, other than those required by staff, or add a statement to the coversheet stating "no additional changes have been made"
5. Please state on cover letter whether you are resubmitting for a secondary review or if you are resubmitting for Final Approval (all DRC comments must be satisfactorily addressed).
6. A digital copy of the plans in pdf format is required at the time of resubmittal or a \$5.00 per page archiving fee will be assessed.
7. Re-submittal Fee: First re-submittal will be at no cost. Second and subsequent re-submittals requiring additional plan review due to changes, additions or revisions to plans will be \$250.00 non-residential/\$100.00 single family.

If a cover letter is not provided, or fails to include the required information, the re-submittal will not be accepted. Contact your Project Manager with any questions.

Your permit application has been reviewed and comments provided by the following staff. Questions concerning staff comments may be directed directly to the following staff members at the phone numbers listed below:

Dedra Ragland, AICP	Planning Director	940-393-0250
Wayne Smith	Building Official	940-393-0255
Greg Hall	Public Works Director	940-393-0262
Deroy Bennett	Fire Marshal	940-393-0230
Rex Hoskins	Police Chief	940-393-0300

City of Decatur

Review Overview - Notes

ID# SGN-18-0314	PROJECT Building Permit - Sign	PROJECT DESCRIPTION Monument Sign for 506 W. Walnut St.	STEP All
Address  506 W Walnut Decatur, TX 76234	Owner TIMOTHY MICHAEL & MITZE ELLENSULLIVAN 284 AMANDA WAY DECATUR, TX 76234	Contractor Decatur TX Property Owner Property Owner 0 City Limits of Decatur Decatur, TX 76234 (940) 000-0000 phone development@decaturtx.org	

Accept Application (SGN) (Review Step)

 Comment Auto-added 2018-04-25 at 03:11 pm

Comments Affecting the Project...

Comments affecting this project are included with the Permit Package. Please read the comments prior to starting any work.

Please sign and date this notice acknowledging you are aware there are comments included with the Permit for this project and inspections will be performed based on the comments.

Any questions concerning the comments may be directed to the Department responsible for the comment or the Building Official.

Wayne Smith
City of Decatur Building Official
1601 S State Street Bldg. C
Decatur, Texas 76234
940-393-0255
wsmith@decaturtx.org

Responsible Party.....Date

PW Review (Review Step)

 Comment Earl Smith 2018-04-30 at 10:17 am

PW Review (No Comments)

Reviewed

PW1. No Comments

Planning Review (Review Step)

 Request Dedra Ragland 2018-04-30 at 12:18 pm


Planning; DDR: DENIED

Please refer to attached Planning Review Comments.

Documents

SGN-18-0314 DRC Comments PL 043018.

BI Plan Review (SGN) & Permit Fees (Review Step)

 Request Wayne Smith 2018-05-01 at 09:48 am

BI Review

Address Planning Director comments



CITY OF DECATUR, TEXAS

Development Services Comments

Date Due: May 15, 2017
Permit #: SGN-18-0314
Permit Name: Mitzi Sullivan Monument Sign Reface
Permit Address: 506 W. Walnut St.
Sign Contractor: Mitzi Sullivan, CPA
Contact Phone: 940.399.9057
Contact Email: mitizi@mescpatx.com

STATUS: Denied

Commenting Department: Planning Department

Date: 04/30/18

Reviewed by: Dedra Ragland, AICP

Status: Denied

Per the City of Decatur Sign Ordinance, Section 15-2 "Definitions:"

Abandoned sign means a sign pertaining to or associated with an event, business, or purpose which is no longer ongoing and which has been inactive or out of business for a period of ninety (90) consecutive days or longer; or a sign which contains structural components but no display for a period of ninety (90) consecutive days or longer or a sign which has a display surface with torn and/or unreadable coverage on the message board which has remained in such state for a period of forty-five (45) consecutive days or more.

Alter means to change the size or shape of a sign.

Reface means to refurbish or to update the area or display surface used for the message but without altering the sign.

Sign means a picture, logo, letters, lights, color, displays and all other such devices or items used to promote or attract attention to a product, business, service or activity.

Per the City of Decatur Sign Ordinance, Sections 15-6(a)(13), 15-6(a)(14) and 15-6(a)(15):

- (13) Freestanding signs over eight (8) feet in height (from grade to top of sign) require structural plans sealed by a civil or structural engineer licensed in Texas.
- (14) Freestanding signs shall be designed for a minimum ninety (90) miles per hour wind load.
- (15) Freestanding signs shall be at least five (5) feet away from buildings, driveways and parking areas. For protection, they must have a curbed or protected landscape area around the sign of at least four (4) feet from the sign structure. This area must be at least four (4) times the size of the sign area.

Per the City of Decatur Sign Ordinance, Section 15-7(a)(14), minimum standards for a monument sign are as follows:

- (14) Monument signs are allowed when there is a front yard of at least ten (10) feet and fifty (50) feet of street frontage. Emergency signs, such as at hospitals, may deviate from these exact requirements whenever adequate emergency signage cannot otherwise be achieved. The planning director shall be responsible for making this determination.

Max. Size: Sixty (60) square feet per face/one hundred twenty (120) square feet in C-2 & M-1 (LI and HI) zones

Number: One (1) per street frontage; two (2) max.

Height: Eight (8) feet/ten (10) feet in C-2 & M-1 (LI and HI) zones; see section 15-3(b)

Location: Mid one-third (1/3) of street frontage

Permit: Required

District: MF, CO, **C-1**, C-1A, C-2 and M-1

THERE IS A 25' FRONT YARD SETBACK ON ALL STREET FRONTAGES.

Based on information you've provided for the proposed Monument Sign:

Property zoned:	C-1 Restricted Business
Front Yard:	16' from Property Line
Street Frontage:	75.9'
Proposed Sign Area:	8 sq. ft.
Proposed Sign Height:	2'
Sign location:	Located in mid one-third of street frontage

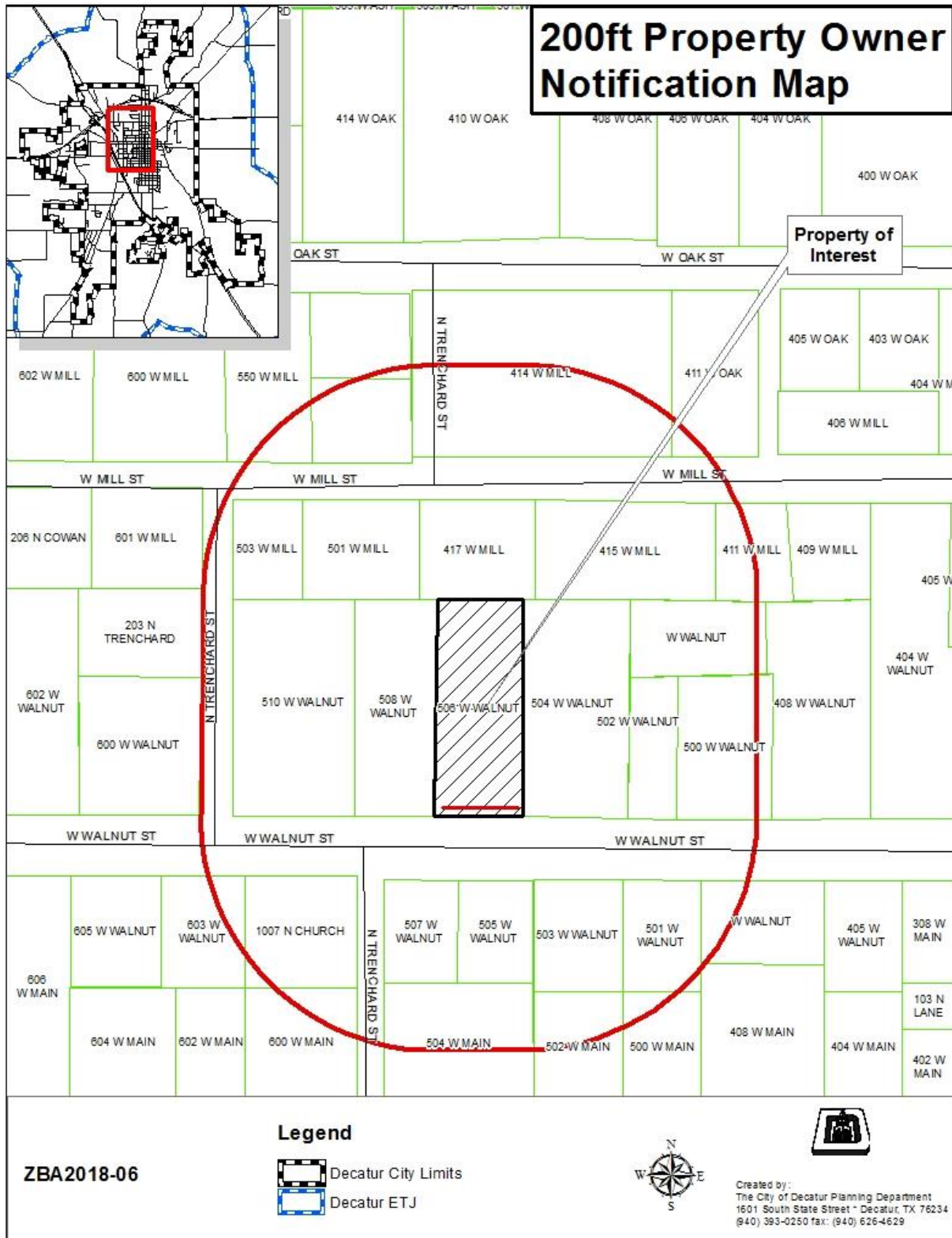
Based on information provided:

- P1. Sign is located in the 25' front yard building setback. Setback must be clear and free of structures. Sign will need to be located outside of front yard building setback or a variance must be granted by the (Zoning) Board of Adjustment (ZBA).
- P2. Sign cannot be considered a reface without documentation of existing signage. The frame could have been left abandoned. Per the Sign Regulations, "Abandoned sign" means a sign pertaining to or associated with an event, business, or purpose which is no longer ongoing and which has been inactive or out of business for a period of ninety (90) consecutive days or longer; **or a sign which contains structural components but no display for a period of ninety (90) consecutive days or longer** or a sign which has a display surface with torn and/or unreadable coverage on the message board which has remained in such state for a period of forty-five (45) consecutive days or more. Once a sign has been abandoned, it is no longer considered a conforming sign.
- P3. Proposed Monument Sign is **DENIED**.
- P4. Options include:
- a. Withdraw application;**
 - b. Revise the sign to meet the front yard setback requirement of 25'; or**

- c. Apply for a setback variance from the Zoning Board of Adjustment (ZBA) to reduce the required setback of 25' to 7'. A ZBA application and checklist are attached. (Attachment 1) The ZBA meets on an as needed basis. The next available meeting date is **Monday, June 18, 2018. Submittal deadline is 10 days after receipt of the Director's written decision by 12 noon.**

Per the Sign Ordinance, requests for a variance must be submitted to the Planning Director no later than 10 days after receipt of the Director's written decision or interpretation. A ZBA application attached. (Attachment 1)

200' Notification Map and Property Owner Responses



None to date

Memo from City Engineer



**City of Decatur
City Engineer**

Memo

To: Cheryl Fuss
Dedra Ragland

Cc: Greg Hall
Katherine Griffith

From: Earl Smith, P.E., CFM, City Engineer

Date: 05/31/2018

Re: ZBA 2018-06; Variance Request, Front Yard Setback; Lot 1, Block 157R,
Tarleton Addition; 506 W. Walnut

Comments on Variance Request:

- 4.3.3 Authority of Board of Adjustment

The Board of Adjustment shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise powers and to perform duties including the following:

- (2) *Variances and Special Exceptions.* Authorize, in specific cases, a Variance or Special Exception (see [4.3.5](#) Appeals to the Board of Adjustment and [4.3.7](#) Special Exceptions) from the terms of this Ordinance if the variance or special exception is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done.

- 4.3.6 Variances

- C. Criteria for Granting a Variance.*

- (2) *Findings of Undue Hardship.*

- (a) In order to grant a variance, the Board of Adjustment shall make findings that an undue hardship exists, using the following criteria:

- (i) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

According to information shown on Wise County Appraisal District, building has existed in the current location, essentially unchanged since 1940. The structure causes no sight problems for traffic or impedes any views by neighboring properties. Also, other structures in the neighborhood generally conform to the same setback. A sign located in the proposed location would pose no issues.

and

- (ii) The situation causing the hardship or difficulty is neither self-imposed nor is it a situation generally affecting all or most properties in the same zoning district;

The building for which the variance is requested is existing and has existed for since 1940. The structure causes no sight problems for traffic or impedes any views by neighboring properties. Also, other structures in the neighborhood generally conform to the same setback. A sign located in the proposed location would pose no issues.

ZBA 2018-06; Variance Request, Front Yard Setback; Lot 1, Block 157R, Tarleton Addition; 506 W. Walnut.

and

(iii) The relief sought will not injure the permitted use of adjacent conforming property;

The structure causes no sight problems for traffic or impedes any views by neighboring properties.

and

(iv) The granting of a variance will be in harmony with the spirit and purpose of these regulations.

Area surrounding property is built out; no future subdivision of properties in area is practical. The property has existed for approximately 78 years (since 1940), causing no known problems to neighboring structures. Also, other structures in the neighborhood generally conform to the same setback. A sign located in the proposed location would pose no issues.

Attachment 7
Photo Exhibits









CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

STAFF REPORT

June 18, 2018 – Board of Adjustment Meeting

TO: (Zoning) Board of Adjustment **CASE: ZBA2018-07**
FROM: Dedra D. Ragland, AICP, Planning Director **APPLICANT: Marsha Nieman**
DATE: May 29, 2018 **REQUEST: Front Yard Setback 105 S. Lane**

Subject:

Board to hear public input and consider taking action on Mrs. Marsha Nieman's request for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7.0'), a reduction of eight feet (8.0') along S. Lane Street. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas.

Case Notes:

On April 12, 2018, Staff met with Mrs. Nieman to discuss a building permit application for a therapeutic pool. The survey that Mrs. Nieman provided revealed that the property is not properly platted; the lot includes part of Lot 8 and part of Lot 9, Block 15, Range F, of the Devereux Addition, the primary structure encroaches on the required front yard setback and the accessory structures encroach on the side (northern property line) and rear yard setbacks. Before a building permit can be issued, the property will need to be replatted. Before the property can be replatted, special exceptions will need to be granted for the front yard, side yard and rear yard setback encroachments. Platting triggers curb, gutter and sidewalk construction, where none exists.

Legality:

According to the Texas Local Government Code, the Board of Adjustment can legally authorize variations to the Zoning Ordinance subject to the conditions listed below (§211.008.010). Each case before the board must be heard by 75 percent of its members (§211.008.d), and the board can only authorize a variation from the terms of the Zoning Ordinance with a concurring vote of 75 percent (§211.009.c).

Conditions for Approval:

The applicant must meet all of the following four conditions to be legally granted a variance or special exception.

Financial or self-induced hardship cannot be considered:

1. The requested variance or special exception does not violate the intent and spirit of the ordinance.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel and are not applicable to other parcels of land in the same zoning district.
3. The hardship is not the result of the applicant's actions, and
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.

Per Section 4.3.7 "Special Exceptions," B. "Authority," of the Zoning Ordinance: The Board of Adjustment is authorized to hear and decide a Special Exception to the zoning regulations which is not permitted by right in a particular Zoning District because of potential adverse effect, but which if controlled in the particular instance as

to its relationship to the neighborhood and to the general welfare, may be permitted by the Board of Adjustment. Special Exceptions may only be considered and granted by the BOA if expressly authorized by C(2), and in accordance with the substantive and procedural standards of this Ordinance.

Deciding Factors:

The Board of Adjustment reviews the application and the response to the four conditions, and then hears the case to determine if the applicant qualifies. If the Board feels the applicant has met the stated conditions, then the Board may approve the variation as long as it meets these criteria (§211.009.a.3):

- 1) The variation is not contrary to the public interest.
- 2) The variation is due to special conditions.
- 3) A literal enforcement of the ordinance would result in unnecessary hardship.
- 4) The spirit of the ordinance is observed and substantial justice is done.

The Board of Adjustment must also review the special exception application per the following criteria:

“C. Criteria for Granting a Special Exception.

- (1) Requests for a Zoning Special Exception.
 - (a) The Board of Adjustment may grant a special exception in accordance with the Zoning Ordinance upon written request of the property owner.
 - (b) The Planning Director shall process and review special exception applications.
- (2) Circumstances for which Special Exceptions are Authorized. When in the Board of Adjustment's judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the Board of Adjustment may, in specific cases, after public notice and public hearing and subject to conditions and safeguards as the BOA determines appropriate, authorize the following special exceptions to the regulations herein established:
 - (a) Nonconforming Uses or Structures.
 - (b) Residential Setback Encroachments. For existing single-family residential and duplex (two-family) structures that were legally constructed prior to the effective date of this Ordinance, the Board of Adjustment may authorize a Special Exception for any Structure that was constructed over a setback line established by this Ordinance.
 - (c) Off-Street Parking Requirements.
 - (d) Fencing.
- (3) *Conditions Imposed.* In granting Special Exceptions under this Section, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which a nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.”

Recommendation:

Staff has the following finding:

1. The requested special exception **does not** violate the intent and spirit of the ordinance. The home and front yard setback encroachment have been in existence since the home's construction in 1935.
2. There **are** special considerations of physical features that are peculiar to the subject parcel that are not applicable to other parcels of land in the same zoning district. The house was allowed to be built straddling the property line between two lots. Property owner is wanting to build a therapeutic spa/pool. In order to do so, the property will need to be replatted. Before the property can be replatted, the existing setback encroachments need to be rectified. The reduced building setback does not appear to be an uncommon phenomenon or a condition that adversely affects the surrounding neighbors. House is believed to have been built in the 1930s and prior to the adoption of the original zoning regulations in 1976 and the subdivision regulations in the mid-1980s. Prior to 1976, there were no zoning regulations and no setback

- requirements.
3. The hardship **is not** a result of the applicant's action. The house and the accessory buildings have been in their current configuration since 1935.
 4. The interpretation of the provisions in this ordinance **does** deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions. Applicant is attempting to bring the property into compliance with the City's regulations but for the illegal encroachment by the primary and accessory structures located on the property. Before staff can issue a permit, a special exception will need to be granted by the ZBA.

Twenty-four (24) property owners were notified. Staff has not received any responses in favor of, opposed to or neutral to the request.

Options:

Recommend approval:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-07 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7.0'), a reduction of eight feet (8.0') along S. Lane Street. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas.

Recommend approval with conditions:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-07 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7.0'), a reduction of eight feet (8.0') along S. Lane Street. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. The conditions being as follows:...

Recommend denial:

From the evidence, testimony and plans presented, I move that the Board deny the request ZBA2018-07 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (a) "Minimum Front Yard," to reduce the required front yard from setback twenty-five feet (25') to seven feet (7.0'), a reduction of eight feet (8.0') along S. Lane Street. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. Denial is based on the following findings:...

Recommend postponing consideration:

From the evidence, testimony and plans presented, I move that the Board postpone consideration of request to a date certain, and requesting additional information for the request ZBA2018-07 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting

a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (a) "Minimum Front Yard," to reduce the required front yard setback from twenty-five feet (25') to seven feet (7.0'), a reduction of eight feet (8.0') along S. Lane Street. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. Additional data being as follows:...

Attachments

1. Location Map
2. Application, Checklist and Letter of Intent
3. Proposed Plat Exhibit
4. 200' Property Owner Notification Map and Responses
5. Memo from City Engineer

Attachment 1
Location Map



Application, Checklist and Letter of Intent

CITY OF DECATUR DEVELOPMENT SERVICES UNIVERSAL APPLICATION

Check box to indicate application type Incomplete applications will be rejected

<input type="checkbox"/> Annexation Petition	<input type="checkbox"/> Gas Well Development Plat	<input type="checkbox"/> Special Use Permit
<input type="checkbox"/> Amending Plat	<input type="checkbox"/> Plat Extension-Final or Preliminary	<input type="checkbox"/> Subdivision Variance
<input type="checkbox"/> Comprehensive Plan Amendment	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Zoning Change
<input type="checkbox"/> Conveyance Instrument	<input type="checkbox"/> Replat	<input checked="" type="checkbox"/> Zoning Variance (ZBA)
<input type="checkbox"/> Design Standards Variance	<input type="checkbox"/> ROW Use Agreement	<input type="checkbox"/> Vacation Plat
<input type="checkbox"/> Final Plat	<input type="checkbox"/> ROW Abandonment/ Closing	<input type="checkbox"/> Other _____

Application Requirements: Signed application form, application fees, Copy and filing fees, Proof of Ownership (Recorded Deed or current tax statements), required # of plats / plans, signed checklist and a PDF of all documentation.

PROJECT INFORMATION: ☐ Residential ☐ Commercial Is this property platted? ☐ Yes ☐ No
 Project Name: MARSHA L. NIEMAN If this property is not platted, submit a survey with complete metes and bounds description sealed by a licensed surveyor Total Acres: 0.222
 Project Address (Location): BLK 15F, LOT: 9 PT 4 PT 8 Parcel(s) Tax ID R #: R 25114
(LOT, BLOCK & SUBDIVISION OR SURVEY WITH METES & BOUNDS DESCRIPTION SEALED BY A LICENSED SURVEYOR)
 Parent Project Name/Number: _____ Parcel(s) Tax ID GEO #: D0465.0492.00
 Brief Description of Project: Front yard setback ETJ ☐ Yes

Please state the identity of any individual(s), or other entities that presently hold a lien upon the real estate which is the subject of this request: RESIDENTIAL Lien holder/mortgagee must also sign plat for filing of record.
 Existing Use: RESIDENTIAL Existing Zoning: C-1 # of Existing Lots: 1 1/2 # of Existing Units: _____
 Proposed Use: RESIDENTIAL Proposed Zoning: C-1 # of Proposed Lots: 1 Proposed Units: _____

APPLICANT INFORMATION: Please circle your preferred method of contact.
 Applicant / Company MARSHA L. NIEMAN Email mnieman7@cox.net
 Address 105 S. LANE ST. Phone 602-321-1000 Fax N/A
 City DECATUR State TX Zip 76234

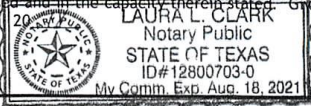
Property Owner MARSHA L. NIEMAN Email mnieman7@cox.net
 Address 105 S. LANE ST. Phone 602-321-1000 Fax _____
 City DECATUR State TX Zip 76234

Key Contact/Company MARSHA L. NIEMAN Email mnieman7@cox.net
 Address 105 S. LANE ST. Phone 602-321-1000 Fax N/A
 City DECATUR State TX Zip 76234

(MUST BE SIGNED FOR ALL APPLICATIONS) - Letter of authorization required if signature is other than property owner and a letter of authorization is required from lienholder/mortgagee, if applicable.
 I hereby certify that I am the owner of the property identified in this application; or, that I am the authorized agent of the owner of said property; and that I am authorized to act in their behalf, and that this application, to the best of my knowledge and belief, is true and correct.
Marsha L. Nieman N/A
 SIGNATURE OF PROPERTY OWNER MARSHA L. NIEMAN SIGNATURE OF LIEN HOLDER

PLAT WAIVER (MUST BE SIGNED FOR ALL PRELIMINARY, FINAL & REPLATS)
 I waive the statutory time limits in accordance with Section 212 of the Texas Local Government Code.
Marsha L. Nieman N/A
 SIGNATURE OF PROPERTY OWNER MARSHA L. NIEMAN SIGNATURE OF LIEN HOLDER

Known to me to be the person(s) whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the capacity therein stated. Given under my hand and seal of office on this 13 day of April
Laura L. Clark
 Notary Public



For Departmental Use Only
 Case#: ZBA2018-07
 Project Mgr: DDK
 Total Fee(s): _____
 Payment Method: CH
 Submission Date: 5/24/18
 Accepted By: DDK
RECEIVED
MAY 24 2018
 CITY OF DECATUR
 DEVELOPMENT SERVICES



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State St ★ P.O. Box 1299 ★ Decatur, TX 76234 ★ www.decaturnx.org

RECEIVED

MAY 24 2018

CITY OF DECATUR
DEVELOPMENT SERVICES

Board of Adjustment Application Checklist

General Requirements:

- ☐ A universal application form and the appropriate fees.
- ☐ A letter of explanation/justification.
- ☐ Submit a total of five (5) copies of site plan (if applicable) for the property. These copies should be individually folded with drawing side out.
- ☐ A location map clearly indicating the site in relation to adjacent streets, distance to nearest intersection and other landmarks.
- ☒ Submit one (1) copy of proof of ownership (recorded property deed or current year tax statements).
- ☒ Submit documentation on any and all liens and lien holders of property.
- ☐ One (1) CD-ROM containing the general required documents in Adobe PDF format.
- ☐ I have reviewed the checklist and all submittals for completeness and accuracy. If application submittal is determined to be incomplete, additional fees may be assessed.

Marsha L. Newman
Signature

5/7/18
Date

Content of the Letter of explanation/justification for a Zoning Variance:

I understand that I am applying for a variance from the Zoning Ordinance of the City of Decatur and that this variance can only be granted if I prove hardship by meeting four of the conditions below. I also understand that financial or self-induced hardship cannot be considered for granting a variance. Below I explain exactly how I meet these four conditions.

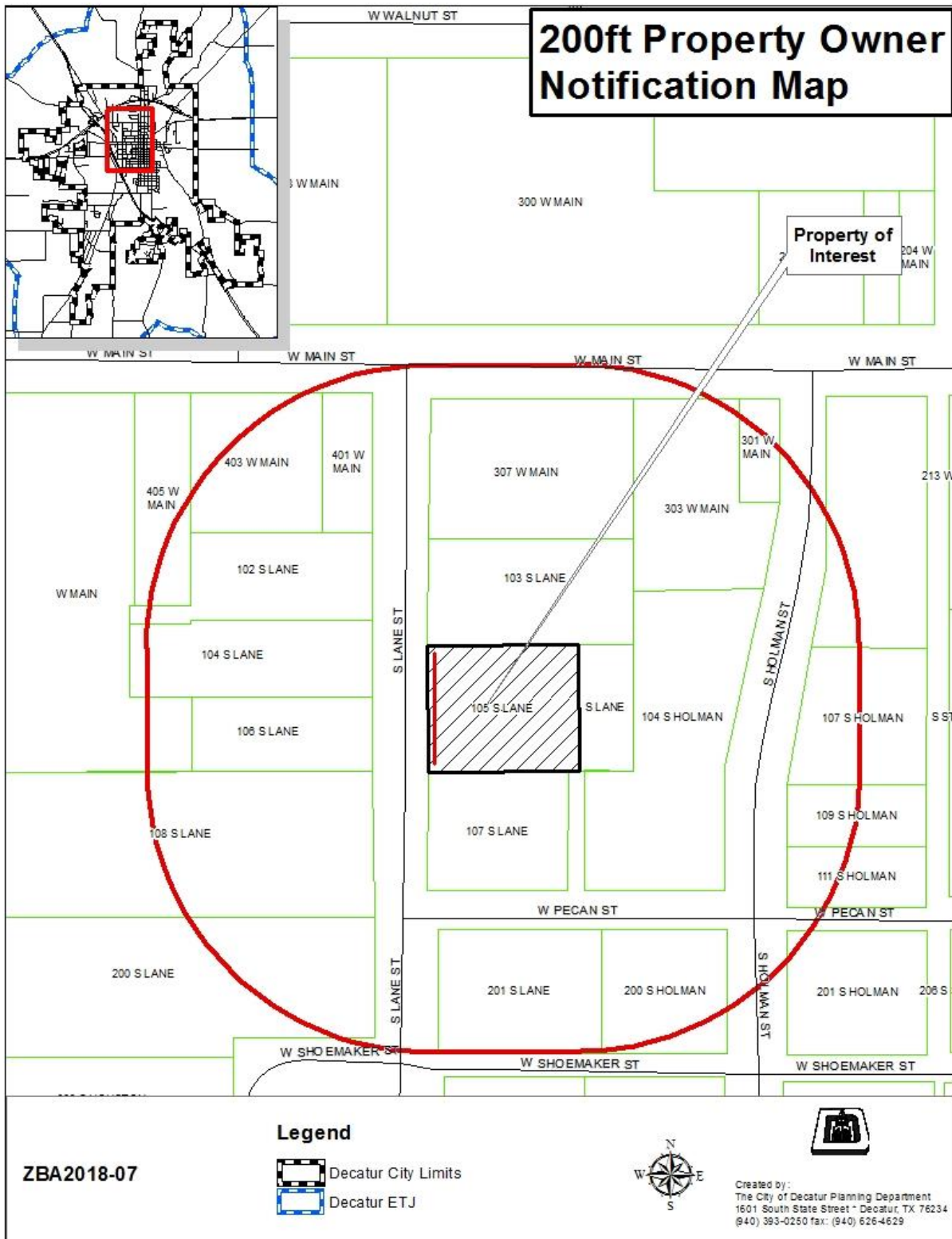
1. The requested variance does not violate the intent and spirit of the ordinance:
I do not feel like this request violates the intent of the ordinance. I am requesting a variance for the front part of my house that sits within the 25' setback. Two storage buildings that sit within the rear 10' setback.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to the other parcels of land in the same zoning district:
3. The hardship is in no way the result of the applicant's action:
House is pre-existing prior to platting requirements. Accessory structures in back are set on concrete slabs that are within the setbacks.
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions:
My house is in line with the historical houses within the City of Decatur.

Form Updated 03/2012

Attachment 3

Traverse PC

200' Notification Map and Property Owner Responses



None to date

Memo from City Engineer



**City of Decatur
City Engineer**

Memo

To: Cheryl Fuss
Dedra Ragland

Cc: Greg Hall
Katherine Griffith

From: Earl Smith, P.E., CFM, City Engineer

Date: 05/31/2018

Re: ZBA 2018-07; Variance Request, Front Yard Setback; Lot 9R, Block 15,
Range F, Devereux Addition; 105 S. Lane

Comments on Variance Request:

- **4.3.3 Authority of Board of Adjustment**

The Board of Adjustment shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise powers and to perform duties including the following:

- (2) *Variances and Special Exceptions.* Authorize, in specific cases, a Variance or Special Exception (see [4.3.5](#) Appeals to the Board of Adjustment and [4.3.7](#) Special Exceptions) from the terms of this Ordinance if the variance or special exception is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done.

- **4.3.6 Variances**

- *C. Criteria for Granting a Variance.*

- (2) *Findings of Undue Hardship.*

- (a) In order to grant a variance, the Board of Adjustment shall make findings that an undue hardship exists, using the following criteria:

- (i) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

According to information shown on Wise County Appraisal District, building has existed in the current location, essentially unchanged since 1935. The structure causes no sight problems for traffic or impedes any views by neighboring properties. Also, other structures in the neighborhood generally conform to the same setback.

and

- (ii) The situation causing the hardship or difficulty is neither self-imposed nor is it a situation generally affecting all or most properties in the same zoning district;

The building for which the variance is requested is existing and has existed for since 1935. The structure causes no sight problems for traffic or impedes any views by neighboring properties. Also, other structures in the neighborhood generally conform to the same setback.

ZBA 2018-07; Variance Request, Front Yard Setback; Lot 9R, Block 15, Range F,
Devereux Addition; 105 S. Lane.

and

(iii) The relief sought will not injure the permitted use of adjacent conforming property;

The structure causes no sight problems for traffic or impedes any views by neighboring properties.

and

(iv) The granting of a variance will be in harmony with the spirit and purpose of these regulations.

Area surrounding property is built out; no future subdivision of properties in area is practical. The property has existed for approximately 83 years (since 1935), causing no known problems to neighboring structures. Also, other structures in the neighborhood generally conform to the same setback.



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

STAFF REPORT

June 18, 2018 – Board of Adjustment Meeting

TO: (Zoning) Board of Adjustment **CASE: ZBA2018-08**
FROM: Dedra D. Ragland, AICP, Planning Director **APPLICANT: Marsha Nieman**
DATE: May 29, 2018 **REQUEST: Side Yard Setback 105 S. Lane**

Subject:

Board to hear public input and consider taking action on Mrs. Marsha Nieman's request for a special exception from the City of Decatur's Zoning Ordinance regarding side yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (c) "Minimum Side Yard," to reduce the required side yard setback from nine feet (9') to two feet (2'), a reduction of seven feet (7') along the northern property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas.

Case Notes:

On April 12, 2018, Staff met with Mrs. Nieman to discuss a building permit application for a therapeutic pool. The survey that Mrs. Nieman provided revealed that the property is not properly platted; the lot includes part of Lot 8 and part of Lot 9, Block 15, Range F, of the Devereux Addition, the primary structure encroaches on the required front yard setback and the accessory structures encroach on the side (northern property line) and rear yard setbacks. Before a building permit can be issued, the property will need to be replatted. Before the property can be replatted, special exceptions will need to be granted for the front yard, side yard and rear yard setback encroachments. Platting triggers curb, gutter and sidewalk construction, where none exists.

Legality:

According to the Texas Local Government Code, the Board of Adjustment can legally authorize variations to the Zoning Ordinance subject to the conditions listed below (§211.008.010). Each case before the board must be heard by 75 percent of its members (§211.008.d), and the board can only authorize a variation from the terms of the Zoning Ordinance with a concurring vote of 75 percent (§211.009.c).

Conditions for Approval:

The applicant must meet all of the following four conditions to be legally granted a variance or special exception.

Financial or self-induced hardship cannot be considered:

1. The requested variance or special exception does not violate the intent and spirit of the ordinance.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel and are not applicable to other parcels of land in the same zoning district.
3. The hardship is not the result of the applicant's actions, and
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.

Per Section 4.3.7 "Special Exceptions," B. "Authority," of the Zoning Ordinance: The Board of Adjustment is authorized to hear and decide a Special Exception to the zoning regulations which is not permitted by right in a particular Zoning District because of potential adverse effect, but which if controlled in the particular instance as

to its relationship to the neighborhood and to the general welfare, may be permitted by the Board of Adjustment. Special Exceptions may only be considered and granted by the BOA if expressly authorized by C(2), and in accordance with the substantive and procedural standards of this Ordinance.

Deciding Factors:

The Board of Adjustment reviews the application and the response to the four conditions, and then hears the case to determine if the applicant qualifies. If the Board feels the applicant has met the stated conditions, then the Board may approve the variation as long as it meets these criteria (§211.009.a.3):

- 1) The variation is not contrary to the public interest.
- 2) The variation is due to special conditions.
- 3) A literal enforcement of the ordinance would result in unnecessary hardship.
- 4) The spirit of the ordinance is observed and substantial justice is done.

The Board of Adjustment must also review the special exception application per the following criteria:

“C. Criteria for Granting a Special Exception.

- (1) Requests for a Zoning Special Exception.
 - (a) The Board of Adjustment may grant a special exception in accordance with the Zoning Ordinance upon written request of the property owner.
 - (b) The Planning Director shall process and review special exception applications.
- (2) Circumstances for which Special Exceptions are Authorized. When in the Board of Adjustment's judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the Board of Adjustment may, in specific cases, after public notice and public hearing and subject to conditions and safeguards as the BOA determines appropriate, authorize the following special exceptions to the regulations herein established:
 - (a) Nonconforming Uses or Structures.
 - (b) Residential Setback Encroachments. For existing single-family residential and duplex (two-family) structures that were legally constructed prior to the effective date of this Ordinance, the Board of Adjustment may authorize a Special Exception for any Structure that was constructed over a setback line established by this Ordinance.
 - (c) Off-Street Parking Requirements.
 - (d) Fencing.
- (3) *Conditions Imposed.* In granting Special Exceptions under this Section, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which a nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.”

Recommendation:

Staff has the following finding:

1. The requested special exception **does not** violate the intent and spirit of the ordinance. The home and front yard setback encroachment have been in existence since the home's construction in 1935. Accessory building with northern side yard encroachment was constructed in 2017. No permit could be located for the structure.
2. There **are** special considerations of physical features that are peculiar to the subject parcel that are not applicable to other parcels of land in the same zoning district. The house was allowed to be built straddling the property line between two lots. Accessory building was constructed without a building permit. Property owner is wanting to build a therapeutic spa/pool. In order to do so, the property will need to be replatted. Before the property can be replatted, the existing setback encroachments need to be rectified. The reduced building side yard setback does not appear to be an uncommon phenomenon or a condition

that adversely affects the surrounding neighbors. House is believed to have been built in the 1930s and prior to the adoption of the original zoning regulations in 1976 and the subdivision regulations in the mid-1980s. Prior to 1976, there were no zoning regulations and no setback requirements.

3. The hardship **is not** a result of the applicant's action. The house and one of the accessory buildings have been in their current configuration since 1935. The other accessory building with the side yard setback encroachment was constructed in 2017 and without a permit.
4. The interpretation of the provisions in this ordinance **does** deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions. Applicant is attempting to bring the property into compliance with the City's regulations but for the illegal encroachment by the primary and accessory structures located on the property. Before staff can issue a permit, a special exception will need to be granted by the ZBA.

Twenty-four (24) property owners were notified. Staff has not received any responses in favor of, opposed to or neutral to the request.

Options:

Recommend approval:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-08 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding side yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (c) "Minimum Side Yard," to reduce the required side yard setback from nine feet (9') to two feet (2'), a reduction of seven feet (7') along the northern property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas.

Recommend approval with conditions:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-08 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding side yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (c) "Minimum Side Yard," to reduce the required side yard setback from nine feet (9') to two feet (2'), a reduction of seven feet (7') along the northern property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. The conditions being as follows:...

Recommend denial:

From the evidence, testimony and plans presented, I move that the Board deny the request ZBA2018-08 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding side yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (c) "Minimum Side Yard," to reduce the required side yard setback from nine feet (9') to two feet (2'), a reduction of seven feet (7') along the northern property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. Denial is based on the following findings:...

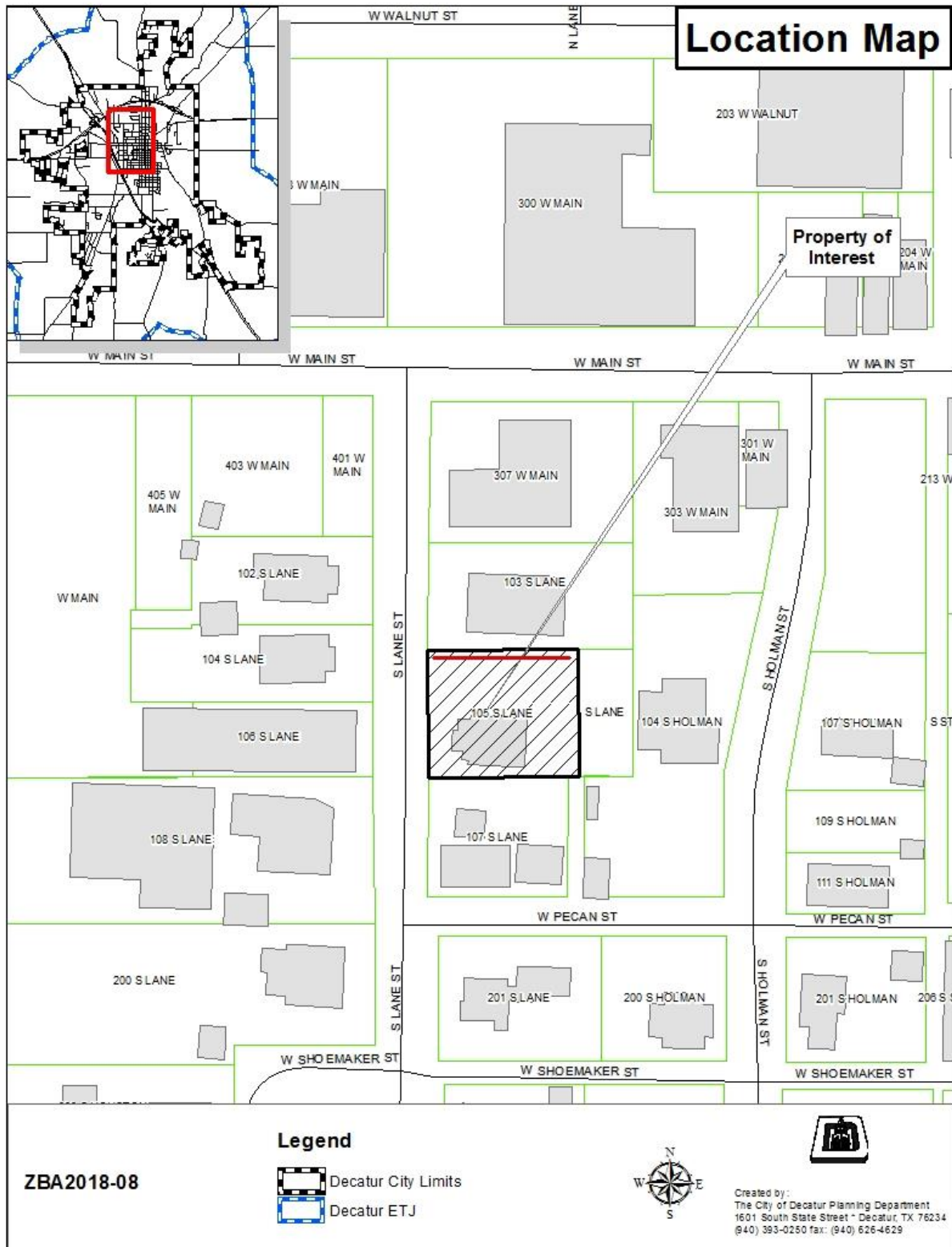
Recommend postponing consideration:

From the evidence, testimony and plans presented, I move that the Board postpone consideration of request to a date certain, and requesting additional information for the request ZBA2018-08 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding side yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (c) "Minimum Side Yard," to reduce the required side yard setback from nine feet (9') to two feet (2'), a reduction of seven feet (7') along the northern property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. Additional data being as follows:...

Attachments

1. Location Map
2. Application, Checklist and Letter of Intent
3. Proposed Plat Exhibit
4. 200' Property Owner Notification Map and Responses
5. Memo from City Engineer

Attachment 1
Location Map



Application, Checklist and Letter of Intent

CITY OF DECATUR DEVELOPMENT SERVICES UNIVERSAL APPLICATION

Check box to indicate application type *Incomplete applications will be rejected*

<input type="checkbox"/> Annexation Petition	<input type="checkbox"/> Gas Well Development Plat	<input type="checkbox"/> Special Use Permit
<input type="checkbox"/> Amending Plat	<input type="checkbox"/> Plat Extension-Final or Preliminary	<input type="checkbox"/> Subdivision Variance
<input type="checkbox"/> Comprehensive Plan Amendment	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Zoning Change
<input type="checkbox"/> Conveyance Instrument	<input type="checkbox"/> Replat	<input checked="" type="checkbox"/> Zoning Variance (ZBA)
<input type="checkbox"/> Design Standards Variance	<input type="checkbox"/> ROW Use Agreement	<input type="checkbox"/> Vacation Plat
<input type="checkbox"/> Final Plat	<input type="checkbox"/> ROW Abandonment/ Closing	<input type="checkbox"/> Other _____

Application Requirements: Signed application form, application fees, Copy and filing fees, Proof of Ownership (Recorded Deed or current tax statements), required # of plats / plans, signed checklist and a PDF of all documentation.

PROJECT INFORMATION: ☐ Residential ☐ Commercial Is this property platted? ☐ Yes ☐ No

Project Name: MARSHA L. NIEMAN If this property is not platted, submit a survey with complete metes and bounds description sealed by a licensed surveyor Total Acres 0.222

Project Address (Location): BLK 15F, LOT: 9 PL 4 & 5 Parcel(s) Tax ID R #: R 25114

Parent Project Name/Number: Nieman House Parcel(s) Tax ID GEO #: D0465.0492.00

Brief Description of Project: Side Yard Addition ETJ ☐ Yes

Please state the identity of any individual(s), or other entities that presently hold a lien upon the real estate which is the subject of this request: RESIDENTIAL Existing Use: RESIDENTIAL Existing Zoning: C-1 # of Existing Lots: 1 1/2 # of Existing Units: _____

Proposed Use: RESIDENTIAL Proposed Zoning: C-1 # of Proposed Lots: 1 Proposed Units: _____

APPLICANT INFORMATION: Please circle your preferred method of contact.

Applicant / Company: MARSHA L. NIEMAN Email: mnieman7@cox.net

Address: 105 S. LANE ST. Phone: 602-321-1000 Fax: N/A

City: DECATUR State: TX Zip: 76234

Property Owner: MARSHA L. NIEMAN Email: mnieman7@cox.net

Address: 105 S. LANE ST. Phone: 602-321-1000 Fax: _____

City: DECATUR State: TX Zip: 76234

Key Contact/Company: MARSHA L. NIEMAN Email: mnieman7@cox.net

Address: 105 S. LANE ST. Phone: 602-321-1000 Fax: N/A

City: DECATUR State: TX Zip: 76234

(MUST BE SIGNED FOR ALL APPLICATIONS) - Letter of authorization required if signature is other than property owner and a letter of authorization is required from lienholder/mortgagee, if applicable.

I hereby certify that I am the owner of the property identified in this application; or, that I am the authorized agent of the owner of said property; and that I am authorized to act in their behalf, and that this application, to the best of my knowledge and belief, is true and correct.

MARSHA L. NIEMAN N/A
SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER

PLAT WAIVER (MUST BE SIGNED FOR ALL PRELIMINARY, FINAL & REPLATS)

I waive the statutory time limits in accordance with Section 212 of the Texas Local Government Code.

MARSHA L. NIEMAN N/A
SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER

Known to me to be the person(s) whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the capacity therein stated. Given under my hand and seal of office on this 13 day of April 2018

Laura L. Clark
Notary Public

LAURA L. CLARK
Notary Public
STATE OF TEXAS
ID#12800703-0
My Comm. Exp. Aug. 18, 2021

For Departmental Use Only
Case#: ZBA2018-08
Project Mgr: DOR
Total Fee(s): _____
Payment Method: CL
Submitted Date: 5/24/18
Accepted By: CL
MAY 24 2018
CITY OF DECATUR
DEVELOPMENT SERVICES



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State St ★ P.O. Box 1299 ★ Decatur, TX 76234 ★ www.decaturng.org



Board of Adjustment Application Checklist

General Requirements:

- ☐ A universal application form and the appropriate fees.
- ☐ A letter of explanation/justification.
- ☐ Submit a total of five (5) copies of site plan (if applicable) for the property. These copies should be individually folded with drawing side out.
- ☐ A location map clearly indicating the site in relation to adjacent streets, distance to nearest intersection and other landmarks.
- ☒ Submit one (1) copy of proof of ownership (recorded property deed or current year tax statements).
- ☐ Submit documentation on any and all liens and lien holders of property.
- ☐ One (1) CD-ROM containing the general required documents in Adobe PDF format.
- ☐ I have reviewed the checklist and all submittals for completeness and accuracy. If application submittal is determined to be incomplete, additional fees may be assessed.

Marsha L. Newman
Signature

5/7/18
Date

Content of the Letter of explanation/justification for a Zoning Variance:

I understand that I am applying for a variance from the Zoning Ordinance of the City of Decatur and that this variance can only be granted if I prove hardship by meeting four of the conditions below. I also understand that financial or self-induced hardship cannot be considered for granting a variance. Below I explain exactly how I meet these four conditions.

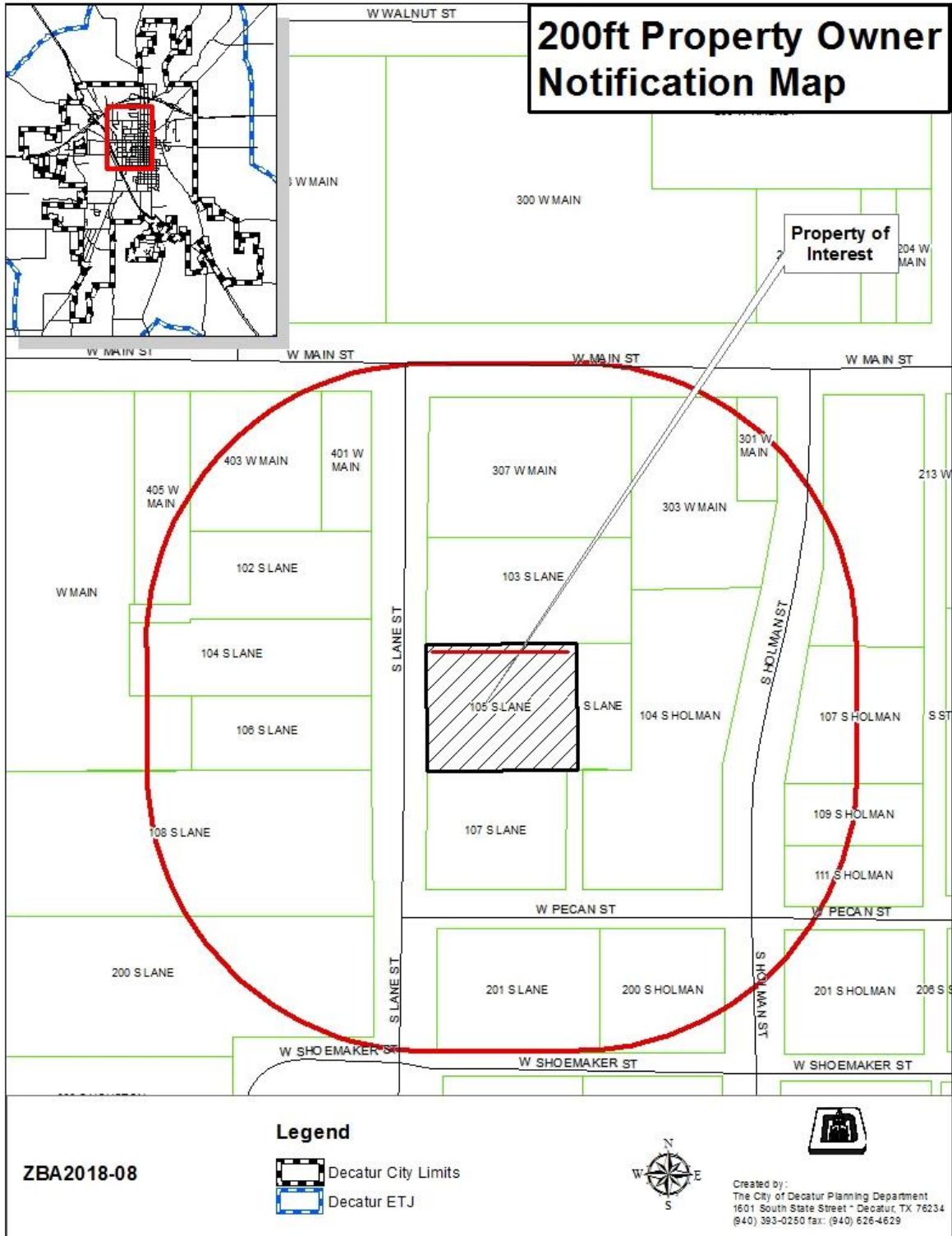
1. The requested variance does not violate the intent and spirit of the ordinance:
I do not feel like this request violates the intent of the ordinance. I am requesting a variance for the front part of my house that sits within the 35' setback. Two storage buildings that sit within the rear 10' setback.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to the other parcels of land in the same zoning district:
The slope of the property prevented safe access to the storage buildings if they were placed forward of their existing location.
3. The hardship is in no way the result of the applicant's action:
These do pre-exist prior to platting requirements. Accessory structures we had are set on concrete slabs that are within the setbacks.
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions:
My house is the same with the historical houses within the City of Decatur.

Form Updated 03/2012

Attachment 3



200' Notification Map and Property Owner Responses



None to date

Memo from City Engineer



**City of Decatur
City Engineer**

Memo

To: Cheryl Fuss
Dedra Ragland

Cc: Greg Hall
Katherine Griffith

From: Earl Smith, P.E., CFM, City Engineer

Date: 05/31/2018

Re: ZBA 2018-08; Variance Request, Side Yard Setback; Lot 9R, Block 15,
Range F, Devereux Addition; 105 S. Lane

Comments on Variance Request:

- 4.3.3 Authority of Board of Adjustment

The Board of Adjustment shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise powers and to perform duties including the following:

- (2) *Variances and Special Exceptions.* Authorize, in specific cases, a Variance or Special Exception (see [4.3.5](#) Appeals to the Board of Adjustment and [4.3.7](#) Special Exceptions) from the terms of this Ordinance if the variance or special exception is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done.

- 4.3.6 Variances

- C. Criteria for Granting a Variance.*

- (2) *Findings of Undue Hardship.*

- (a) In order to grant a variance, the Board of Adjustment shall make findings that an undue hardship exists, using the following criteria:

- (i) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

According to information shown on Wise County Appraisal District, building has existed in the current location, essentially unchanged since 1935. The structure causes no sight problems for traffic or impedes any views by neighboring properties. There is not expected to ever be any use of side yards or back yard for any utilities. All City utilities are in the street. Other utilities have served the property in their current location for many years.

and

- (ii) The situation causing the hardship or difficulty is neither self-imposed nor is it a situation generally affecting all or most properties in the same zoning district;

The building for which the variance is requested is existing and has existed for since 1935. The structure causes no sight problems for traffic or impedes any views by neighboring properties. There is not expected to ever be any use of side yards or back yard for any utilities. All City utilities are in the street. Other utilities have served the property in their current location for many years.

ZBA 2018-08; Variance Request, Side Yard Setback; Lot 9R, Block 15, Range F,
Devereux Addition; 105 S. Lane.

and

(iii) The relief sought will not injure the permitted use of adjacent conforming property;

The structure causes no sight problems for traffic or impedes any views by neighboring properties.

and

(iv) The granting of a variance will be in harmony with the spirit and purpose of these regulations.

Area surrounding property is built out; no future subdivision of properties in area is practical. The property has existed for approximately 83 years (since 1935), causing no known problems to neighboring structures. There is not expected to ever be any use of side yards or back yard for any utilities. All City utilities are in the street. Other utilities have served the property in their current location for many years.



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

STAFF REPORT

June 18, 2018 – Board of Adjustment Meeting

TO: (Zoning) Board of Adjustment **CASE: ZBA2018-09**
FROM: Dedra D. Ragland, AICP, Planning Director **APPLICANT: Marsha Nieman**
DATE: May 29, 2018 **REQUEST: Rear Yard Setback 105 S. Lane**

Subject:

Board to hear public input and consider taking action on Mrs. Marsha Nieman's request for a special exception from the City of Decatur's Zoning Ordinance regarding rear yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (d) "Minimum Rear Yard," to reduce the required rear yard setback from ten feet (10') to two feet (2'), a reduction of eight feet (8') along the rear property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas.

Case Notes:

On April 12, 2018, Staff met with Mrs. Nieman to discuss a building permit application for a therapeutic pool. The survey that Mrs. Nieman provided revealed that the property is not properly platted; the lot includes part of Lot 8 and part of Lot 9, Block 15, Range F, of the Devereux Addition, the primary structure encroaches on the required front yard setback and the accessory structures encroach on the side (northern property line) and rear yard setbacks. Before a building permit can be issued, the property will need to be replatted. Before the property can be replatted, special exceptions will need to be granted for the front yard, side yard and rear yard setback encroachments. Platting triggers curb, gutter and sidewalk construction, where none exists.

Legality:

According to the Texas Local Government Code, the Board of Adjustment can legally authorize variations to the Zoning Ordinance subject to the conditions listed below (§211.008.010). Each case before the board must be heard by 75 percent of its members (§211.008.d), and the board can only authorize a variation from the terms of the Zoning Ordinance with a concurring vote of 75 percent (§211.009.c).

Conditions for Approval:

The applicant must meet all of the following four conditions to be legally granted a variance or special exception.

Financial or self-induced hardship cannot be considered:

1. The requested variance or special exception does not violate the intent and spirit of the ordinance.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel and are not applicable to other parcels of land in the same zoning district.
3. The hardship is not the result of the applicant's actions, and
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.

Per Section 4.3.7 "Special Exceptions," B. "Authority," of the Zoning Ordinance: The Board of Adjustment is authorized to hear and decide a Special Exception to the zoning regulations which is not permitted by right in a particular Zoning District because of potential adverse effect, but which if controlled in the particular instance as

to its relationship to the neighborhood and to the general welfare, may be permitted by the Board of Adjustment. Special Exceptions may only be considered and granted by the BOA if expressly authorized by C(2), and in accordance with the substantive and procedural standards of this Ordinance.

Deciding Factors:

The Board of Adjustment reviews the application and the response to the four conditions, and then hears the case to determine if the applicant qualifies. If the Board feels the applicant has met the stated conditions, then the Board may approve the variation as long as it meets these criteria (§211.009.a.3):

- 1) The variation is not contrary to the public interest.
- 2) The variation is due to special conditions.
- 3) A literal enforcement of the ordinance would result in unnecessary hardship.
- 4) The spirit of the ordinance is observed and substantial justice is done.

The Board of Adjustment must also review the special exception application per the following criteria:

“C. Criteria for Granting a Special Exception.

- (1) Requests for a Zoning Special Exception.
 - (a) The Board of Adjustment may grant a special exception in accordance with the Zoning Ordinance upon written request of the property owner.
 - (b) The Planning Director shall process and review special exception applications.
- (2) Circumstances for which Special Exceptions are Authorized. When in the Board of Adjustment's judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the Board of Adjustment may, in specific cases, after public notice and public hearing and subject to conditions and safeguards as the BOA determines appropriate, authorize the following special exceptions to the regulations herein established:
 - (a) Nonconforming Uses or Structures.
 - (b) Residential Setback Encroachments. For existing single-family residential and duplex (two-family) structures that were legally constructed prior to the effective date of this Ordinance, the Board of Adjustment may authorize a Special Exception for any Structure that was constructed over a setback line established by this Ordinance.
 - (c) Off-Street Parking Requirements.
 - (d) Fencing.
- (3) *Conditions Imposed.* In granting Special Exceptions under this Section, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which a nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.”

Recommendation:

Staff has the following finding:

1. The requested special exception **does not** violate the intent and spirit of the ordinance. The home and one of the accessory structures setback encroachments have been in existence since the home's construction in 1935.
2. There **are** special considerations of physical features that are peculiar to the subject parcel that are not applicable to other parcels of land in the same zoning district. The house was allowed to be built straddling the property line between two lots. Property owner is wanting to build a therapeutic spa/pool. In order to do so, the property will need to be replatted. Before the property can be replatted, the existing setback encroachments need to be rectified. The reduced building setback does not appear to be an uncommon phenomenon or a condition that adversely affects the surrounding neighbors. House and accessory structure are believed to have been built in the 1930s and prior to the adoption of the original zoning

regulations in 1976 and the subdivision regulations in the mid-1980s. Prior to 1976, there were no zoning regulations and no setback requirements.

3. The hardship **is not** a result of the applicant's action. The house and one of the accessory buildings have been in their current configuration since 1935.
4. The interpretation of the provisions in this ordinance **does** deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions. Applicant is attempting to bring the property into compliance with the City's regulations but for the illegal encroachment by the primary and accessory structures located on the property. Before staff can issue a permit, a special exception will need to be granted by the ZBA.

Twenty-four (24) property owners were notified. Staff has not received any responses in favor of, opposed to or neutral to the request.

Options:

Recommend approval:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-09 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (d) "Minimum Rear Yard," to reduce the required rear yard setback from ten feet (10') to two feet (2'), a reduction of eight feet (8') along the rear property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas.

Recommend approval with conditions:

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-09 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (d) "Minimum Rear Yard," to reduce the required rear yard setback from ten feet (10') to two feet (2'), a reduction of eight feet (8') along the rear property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. The conditions being as follows:...

Recommend denial:

From the evidence, testimony and plans presented, I move that the Board deny the request ZBA2018-09 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.9 "C-1, Restricted Business District," Item D "Area Regulations," (1) "Size of Yards," (d) "Minimum Rear Yard," to reduce the required rear yard setback from ten feet (10') to two feet (2'), a reduction of eight feet (8') along the rear property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux's Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux's Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. Denial is based on the following findings:...

Recommend postponing consideration:

From the evidence, testimony and plans presented, I move that the Board postpone consideration of request to a date certain, and requesting additional information for the request ZBA2018-08 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding rear yard setbacks. Specifically, applicant is requesting

a special exception to the City of Decatur Code of Ordinances, Appendix B. “Zoning,” Article 5. “Zoning Districts,” Section 5.1 “Zoning Districts Established,” Subsection 5.1.9 “C-1, Restricted Business District,” Item D “Area Regulations,” (1) “Size of Yards,” (d) “Minimum Rear Yard,” to reduce the required rear yard setback from ten feet (10’) to two feet (2’), a reduction of eight feet (8’) along the rear property line. The subject property is currently platted as part of Lots 8 and 9, Block 15, Range F, Devereux’s Addition; it is proposed to be replatted as Lot 9-R, Block 15, Range F, Devereux’s Addition and is more commonly referred to as 105 S. Lane Street, City of Decatur, Wise County, Texas. Additional data being as follows:...

Attachments

1. Location Map
2. Application, Checklist and Letter of Intent
3. Proposed Plat Exhibit
4. 200’ Property Owner Notification Map and Responses
5. Memo from City Engineer

Attachment 1
Location Map



Application, Checklist and Letter of Intent

CITY OF DECATUR DEVELOPMENT SERVICES UNIVERSAL APPLICATION

Check box to indicate application type Incomplete applications will be rejected

<input type="checkbox"/> Annexation Petition	<input type="checkbox"/> Gas Well Development Plat	<input type="checkbox"/> Special Use Permit
<input type="checkbox"/> Amending Plat	<input type="checkbox"/> Plat Extension-Final or Preliminary	<input type="checkbox"/> Subdivision Variance
<input type="checkbox"/> Comprehensive Plan Amendment	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Zoning Change
<input type="checkbox"/> Conveyance Instrument	<input type="checkbox"/> Replat	<input checked="" type="checkbox"/> Zoning Variance (ZBA)
<input type="checkbox"/> Design Standards Variance	<input type="checkbox"/> ROW Use Agreement	<input type="checkbox"/> Vacation Plat
<input type="checkbox"/> Final Plat	<input type="checkbox"/> ROW Abandonment/ Closing	<input type="checkbox"/> Other _____

Application Requirements: Signed application form, application fees, Copy and filing fees, Proof of Ownership (Recorded Deed or current tax statements), required # of plats / plans, signed checklist and a PDF of all documentation.

PROJECT INFORMATION: ☐ Residential ☐ Commercial Is this property platted? ☐ Yes ☐ No
 Project Name: MARSHA L. NIEMAN If this property is not platted, submit a survey with complete metes and bounds description sealed by a licensed surveyor
 Project Address (Location): BLK 15E LOT: 9 PLATS (LOT, BLOCK & SUBDIVISION OR SURVEY WITH METES & BOUNDS DESCRIPTION SEALED BY A LICENSED SURVEYOR) Parcel(s) Tax ID R #: R 25114
 Parent Project Name/Number: Nieman House Parcel(s) Tax ID GEO #: D0465.0492.00
 Brief Description of Project: Rear yard setback ETJ ☐ Yes

Please state the identity of any individual(s), or other entities that presently hold a lien upon the real estate which is the subject of this request: 0 Lien holder/mortgagee must also sign plat for filing of record.

Existing Use: RESIDENTIAL Existing Zoning: C-1 # of Existing Lots: 1 1/2 # of Existing Units: _____
 Proposed Use: RESIDENTIAL Proposed Zoning: C-1 # of Proposed Lots: 1 Proposed Units: _____

APPLICANT INFORMATION: Please circle your preferred method of contact.
 Applicant / Company: MARSHA L. NIEMAN Email: mnieman7@cox.net
 Address: 105 S. LANE ST. Phone: 602-321-1000 Fax: N/A
 City: DECATUR State: TX Zip: 76234

Property Owner: MARSHA L. NIEMAN Email: mnieman7@cox.net
 Address: 105 S. LANE ST. Phone: 602-321-1000 Fax: _____
 City: DECATUR State: TX Zip: 76234

Key Contact/Company: MARSHA L. NIEMAN Email: mnieman7@cox.net
 Address: 105 S. LANE ST. Phone: 602-321-1000 Fax: N/A
 City: DECATUR State: TX Zip: 76234

(MUST BE SIGNED FOR ALL APPLICATIONS) - Letter of authorization required if signature is other than property owner and a letter of authorization is required from lienholder/mortgagee, if applicable.
 I hereby certify that I am the owner of the property identified in this application; or, that I am the authorized agent of the owner of said property; and that I am authorized to act in their behalf, and that this application, to the best of my knowledge and belief, is true and correct.


Marsha L. Nieman N/A
 SIGNATURE OF PROPERTY OWNER MARSHA L. NIEMAN SIGNATURE OF LIEN HOLDER

PLAT WAIVER (MUST BE SIGNED FOR ALL PRELIMINARY, FINAL & REPLATS)
 I waive the statutory time limits in accordance with Section 212 of the Texas Local Government Code.

Marsha L. Nieman N/A
 SIGNATURE OF PROPERTY OWNER MARSHA L. NIEMAN SIGNATURE OF LIEN HOLDER

Known to me to be the person(s) whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the capacity therein stated - Given under my hand and seal of office on this 13 day of April

Laura L. Clark
 Notary Public



For Departmental Use Only
 Case#: 2020-08-09
 Project Mgr: DOR
 Total Fee(s): _____
 Payment Method: CV
 Submittal Date: 5/24/18
 Accepted By: RECEIVED
MAY 24 2018
 CITY OF DECATUR
 DEVELOPMENT SERVICES



CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State St ★ P.O. Box 1299 ★ Decatur, TX 76234 ★ www.decaturnx.org



Board of Adjustment Application Checklist

General Requirements:

- ☐ A universal application form and the appropriate fees.
- ☐ A letter of explanation/justification.
- ☐ Submit a total of five (5) copies of site plan (if applicable) for the property. These copies should be individually folded with drawing side out.
- ☐ A location map clearly indicating the site in relation to adjacent streets, distance to nearest intersection and other landmarks.
- ☒ Submit one (1) copy of proof of ownership (recorded property deed or current year tax statements).
- ☐ Submit documentation on any and all liens and lien holders of property.
- ☐ One (1) CD-ROM containing the general required documents in Adobe PDF format.
- ☐ I have reviewed the checklist and all submittals for completeness and accuracy. If application submittal is determined to be incomplete, additional fees may be assessed.

Marsha L. Newman
Signature

5/7/18
Date

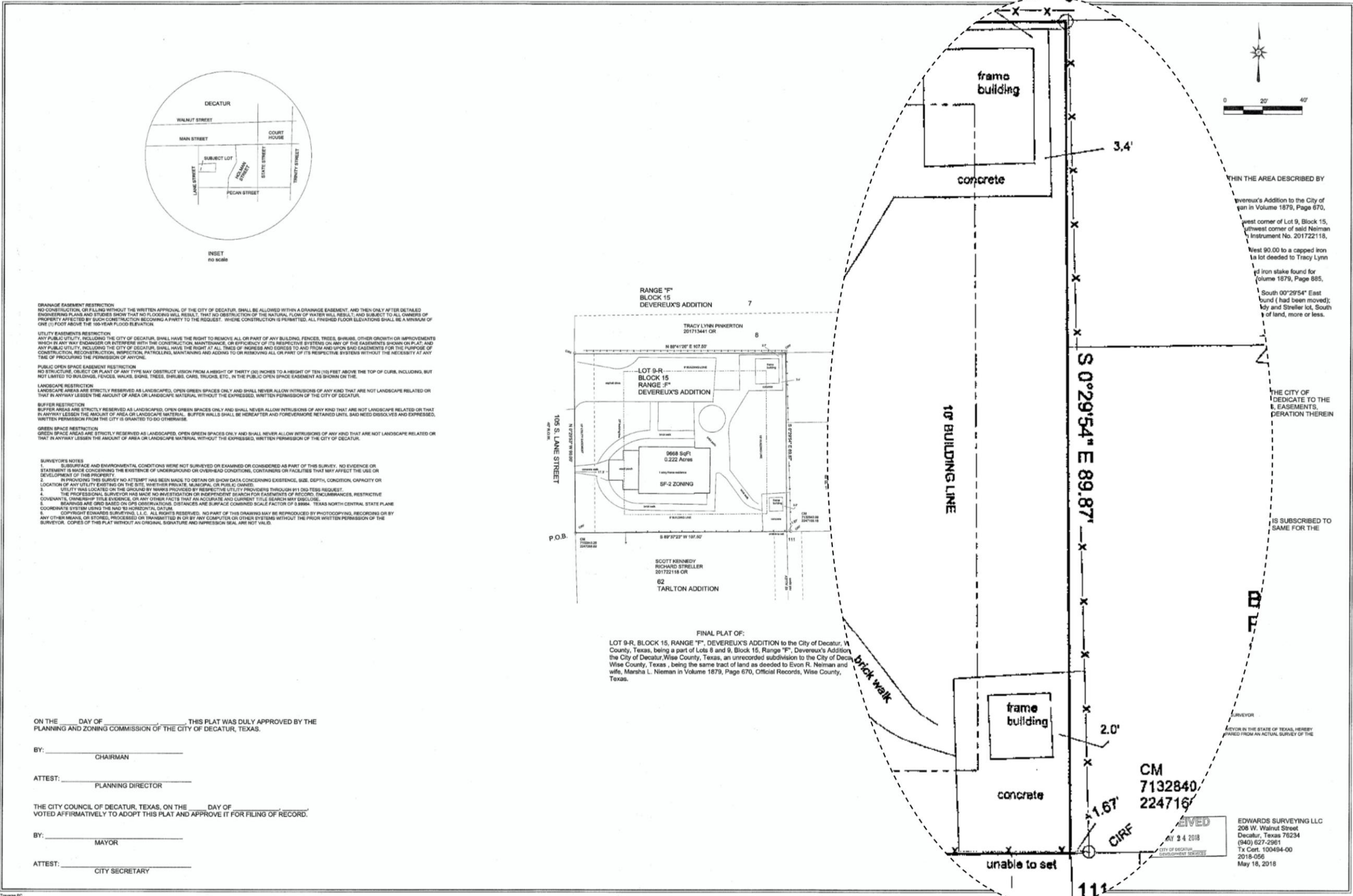
Content of the Letter of explanation/justification for a Zoning Variance:

I understand that I am applying for a variance from the Zoning Ordinance of the City of Decatur and that this variance can only be granted if I prove hardship by meeting four of the conditions below. I also understand that financial or self-induced hardship cannot be considered for granting a variance. Below I explain exactly how I meet these four conditions.

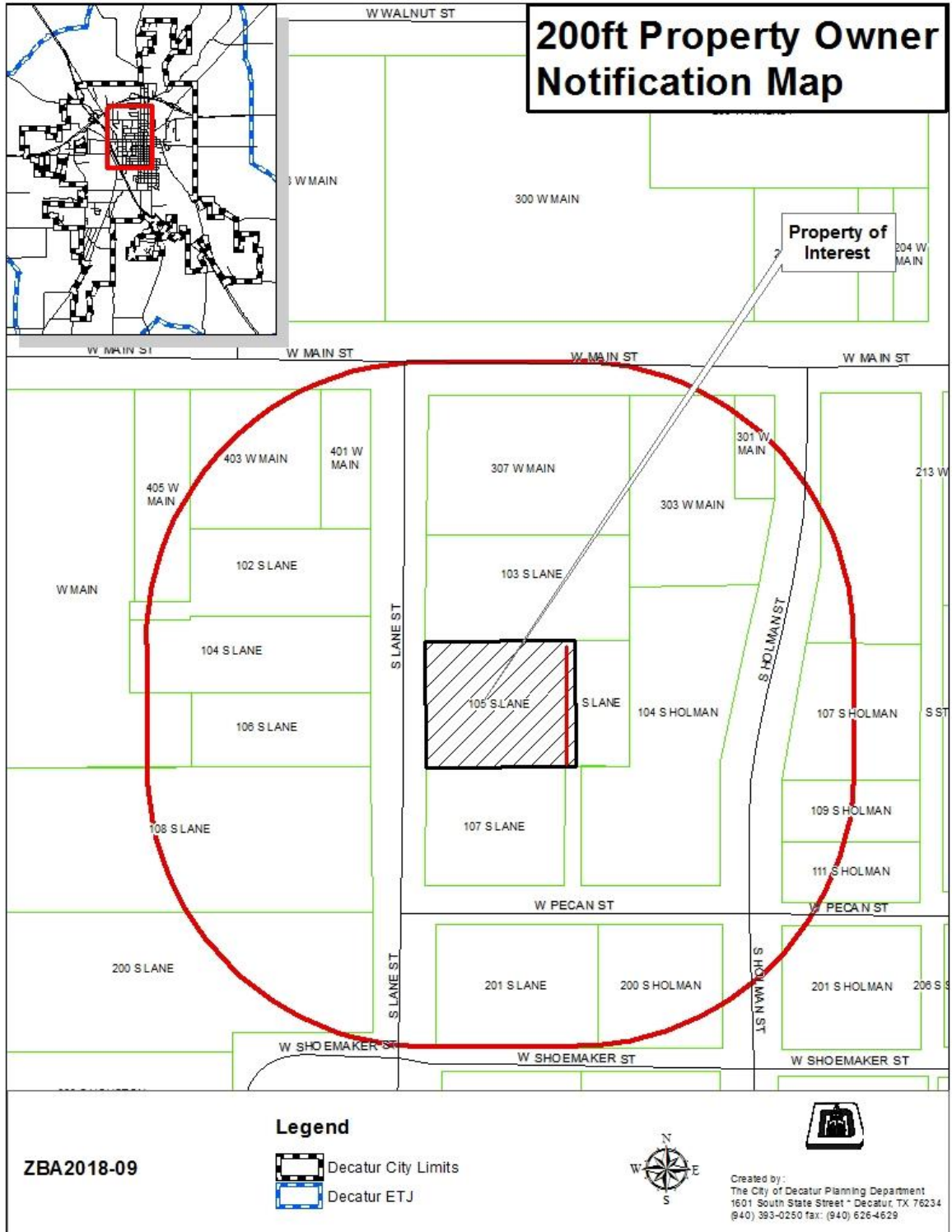
1. The requested variance does not violate the intent and spirit of the ordinance:
I do not feel like this request violates the intent of the ordinance. I am requesting a variance for the front part of my house that sits within the 35' setback. Two storage buildings that sit within the rear 10' setback.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to the other parcels of land in the same zoning district:
The slope of the property prevented safe access to the storage buildings if they were placed forward of their existing placement location.
3. The hardship is in no way the result of the applicant's action:
These do pre-exist prior to platting requirements. Access structures in back are set on concrete slabs that are within the setbacks.
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions:
My house is the same with the historical houses within the City of Decatur.

Form Updated 03/2012 BR

Attachment 3
Proposed Plat Exhibit



200' Notification Map and Property Owner Responses



None to date

Memo from City Engineer



**City of Decatur
City Engineer**

Memo

To: Cheryl Fuss
Dedra Ragland

Cc: Greg Hall
Katherine Griffith

From: Earl Smith, P.E., CFM, City Engineer

Date: 05/31/2018

Re: ZBA 2018-09; Variance Request, Rear Yard Setback; Lot 9R, Block 15,
Range F, Devereux Addition; 105 S. Lane

Comments on Variance Request:

- **4.3.3 Authority of Board of Adjustment**

The Board of Adjustment shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise powers and to perform duties including the following:

- (2) *Variances and Special Exceptions.* Authorize, in specific cases, a Variance or Special Exception (see [4.3.5](#) Appeals to the Board of Adjustment and [4.3.7](#) Special Exceptions) from the terms of this Ordinance if the variance or special exception is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done.

- **4.3.6 Variances**

- *C. Criteria for Granting a Variance.*

- (2) *Findings of Undue Hardship.*

- (a) In order to grant a variance, the Board of Adjustment shall make findings that an undue hardship exists, using the following criteria:

- (i) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

According to information shown on Wise County Appraisal District, building has existed in the current location, essentially unchanged since 1935. The structure causes no sight problems for traffic or impedes any views by neighboring properties. There is not expected to ever be any use of side yards or back yard for any utilities. All City utilities are in the street. Other utilities have served the property in their current location for many years.

and

- (ii) The situation causing the hardship or difficulty is neither self-imposed nor is it a situation generally affecting all or most properties in the same zoning district;

The building for which the variance is requested is existing and has existed for since 1935. The structure causes no sight problems for traffic or impedes any views by neighboring properties. There is not expected to ever be any use of side yards or back yard for any utilities. All City utilities are in the street. Other utilities have served the property in their current location for many years.

ZBA 2018-09; Variance Request, Rear Yard Setback; Lot 9R, Block 15, Range F,
Devereux Addition; 105 S. Lane.

and

(iii) The relief sought will not injure the permitted use of adjacent conforming property;

The structure causes no sight problems for traffic or impedes any views by neighboring properties.

and

(iv) The granting of a variance will be in harmony with the spirit and purpose of these regulations.

Area surrounding property is built out; no future subdivision of properties in area is practical. The property has existed for approximately 83 years (since 1935), causing no known problems to neighboring structures. There is not expected to ever be any use of side yards or back yard for any utilities. All City utilities are in the street. Other utilities have served the property in their current location for many years.